

CONSOLIDATED SUMMARY JUDGMENT EXHIBITS

EXHIBIT 7

1
2 UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

3 -----X
PAUL IACOVACCI,

4
PLAINTIFF,

5
6 -against-

Case No:

1:18-cv-08048

7
8 BREVET HOLDINGS, LLC, et al.,

9 DEFENDANTS.

-----X

10
11 DATE: October 7, 2021

12 TIME: 8:34 A.M.

13
14
15 VIRTUAL DEPOSITION of the
16 Defendant/30(b)(6) witness, DOUGLAS
17 MONTICCIOLO, taken by the Plaintiff,
18 pursuant to Stipulation and to the Federal
19 Rules of Civil Procedure, held at the above
20 date and time, remotely before Cleo
21 Shenkin, a Notary Public of the State of
22 New York.

A P P E A R A N C E S:

CYRULNIK FATTARUSO LLP

Attorney for the Plaintiff

55 Broadway, 3rd Floor

New York, New York 10006

BY: JASON CYRULNIK, ESQ.

REED SMITH LLP

Attorneys for the Defendants

599 Lexington Avenue, 22nd Floor

New York, New York 10022

BY: LOUIS SOLOMON, ESQ.

ALSO PRESENT:

DAVID ROTHSTEIN, LEGAL VIDEOGRAPHER

PAUL FATTARUSO, ESQ.

ADINA LEVINE, ESQ.

SCOTT WEISS, ESQ.

MONICA YANG, ESQ.

* * *

F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

* * * *

1
2 THE VIDEOGRAPHER: Good
3 morning, we are going on the record
4 at 8:34 a.m., on October 7, 2021.

5 Please note that the
6 microphones are sensitive and may
7 pick up whispering, private
8 conversations and cellular
9 interference. Please turn off all
10 cell phones or place them away from
11 the microphones, as they can
12 interfere with the deposition audio.

13 Audio and video recording will
14 continue to take place unless all
15 parties agree to go off the record.

16 This deposition is being held
17 remotely. This is media unit No. 1
18 of the video-recorded deposition of
19 Douglas Monticciolo, located at
20 599 Lexington Avenue, in New York,
21 New York.

22 This deposition is being taken
23 by counsel for the plaintiff in the
24 matter of Paul Iacovacci versus
25 Brevet Holdings, LLC, et al., filed

1
2 in the United States District Court,
3 Southern District of New York, case
4 No. 1:18-cv-08048.

5 My name is David Rothstein,
6 from the firm Veritext New York and I
7 am the videographer. The court
8 reporter is Cleo Shenkin, from the
9 firm Veritext New York.

10 I am not related to any party
11 in this action, nor am I financially
12 interested in the outcome.

13 Counsel will now please state
14 their appearances and affiliations
15 for the record; if there are any
16 objections to the proceeding, please
17 state them at the time of your
18 appearance, beginning with the
19 noticing attorney.

20 MR. CYRULNIK: Good morning.
21 Jason Cyrulnik, Cyrulnik Fattaruso.
22 On behalf of the plaintiff.

23 With me are my colleagues Paul
24 Fattaruso and Adina Levine and
25 co-counsel Scott Weiss.

1 D. MONTICCIOLO

2 MR. SOLOMON: I am Lou Solomon.
3 With me is Monica Weiss from Reed
4 Smith -- Monica Yang from Reed Smith.
5 And we are counsel to the defendants
6 and to the witness.

7 And I did want to thank
8 Mr. Cyrulnik for the earlier start,
9 which we just asked him about
10 yesterday.

11 THE VIDEOGRAPHER: Will the
12 court reporter please swear in the
13 witness.

14 D O U G L A S M O N T I C C I O L O ,
15 called as a witness, having been first duly
16 sworn by a Notary Public of the State of
17 New York, was examined and testified as
18 follows:

19 EXAMINATION BY

20 MR. CYRULNIK:

21 Q. Please state your name for the
22 record.

23 A. Douglas Monticciolo.

24 Q. What is your address?

25 A. 599 Lexington, New York, New

1 D. MONTICCIOLO

2 York.

3 Q. Good morning, Mr. Monticciolo.
4 As I mentioned just a moment before we
5 started, my name is Jason Cyrulnik and I
6 represent Paul Iacovacci, the plaintiff in
7 this litigation.

8 Before we get started, I just
9 want to ask you a couple of questions about
10 your current circumstances there at Reed
11 Smith. Have you had an opportunity to set
12 up the Veritext Exhibit Share program?

13 MR. SOLOMON: I think we did.
14 I think it's working. We will let
15 you know.

16 MR. CYRULNIK: Great, okay.

17 Q. Well, we will test that out
18 when we introduce the first exhibit today
19 and you will let me know if you are having
20 any trouble, but Mr. Solomon aptly -- or,
21 at least, his colleagues supporting him
22 aptly handled that at the last deposition,
23 so hopefully --

24 MR. SOLOMON: It was basically
25 Mr. Solomon by himself.

1 D. MONTICCIOLO

2 MR. CYRULNIK: Well, I thought
3 you were giving credit to one --

4 MR. SOLOMON: Basically. I
5 said basically, basically.

6 MR. CYRULNIK: Okay.
7 We will go with that cover
8 story for now.

9 Q. Mr. Monticciolo, have you had
10 an opportunity to sit for deposition
11 before?

12 A. Yes.

13 Q. Can you give me a feel for
14 approximately how many times you have sat
15 for deposition?

16 A. Several recent, in the last
17 couple of years.

18 Q. Did you say several over the
19 last couple of years?

20 A. Yes.

21 Q. More or less than five?

22 A. I would say less than five.

23 Q. Okay. And if you exclude the
24 qualifier of over the last couple of years,
25 have you sat for deposition more than five

1 D. MONTICCIOLO

2 times over the course of your lifetime?

3 A. Yes.

4 Q. How about more than ten?

5 A. As I sit here, I don't think
6 so.

7 Q. Okay. Have you ever been a
8 party to a lawsuit?

9 A. Yes.

10 Q. Approximately how many times
11 have you been named as a party to a
12 lawsuit?

13 A. Less than five times.

14 Q. Okay. And of those less than
15 five times, can you recall whether you were
16 the plaintiff or the defendant in the
17 lawsuits that you are thinking of?

18 A. As I sit here, I can't recall
19 those.

20 Q. Okay. Have you ever been named
21 as a plaintiff in a lawsuit?

22 A. As I sit here, I don't recall
23 that I have.

24 Q. Okay. So do you know how many
25 times you have been named as a defendant in

1 D. MONTICCIOLO

2 a lawsuit?

3 A. I don't recall the exact number
4 at this time, but I, like I said, I think
5 it's, it's probably not many.

6 I don't want to guess that.

7 Q. Yes, well, let's talk about
8 active litigations.

9 Do you know are you a defendant
10 in any litigations other than the one that
11 you are currently litigating with
12 Mr. Iacovacci?

13 A. No.

14 Q. Okay. Have you ever been named
15 in a criminal lawsuit before?

16 A. No.

17 Q. Okay. The depositions that you
18 recalled sitting for, were those
19 depositions that were taken in connection
20 with litigations in which you were
21 personally named as a party?

22 A. As I sit here, I don't recall
23 specifically, I don't recall. It's been a
24 while.

25 Q. Have you sat for deposition in

1 D. MONTICCIOLO

2 connection with litigations involving one
3 or more of your companies as parties?

4 A. Yes.

5 Q. And have you sat for deposition
6 in connection with litigations that named
7 one or more of the Brevet entities as a
8 party?

9 A. Yes.

10 Q. Can you describe for me the
11 litigation that you recall in which you sat
12 for deposition that involved the Brevet
13 entities, one or more Brevet entities?

14 A. I don't recall when. It was a
15 long time ago.

16 Q. If I recall your answer
17 correctly, you had testified that in recent
18 years, you sat for deposition less than
19 five times, did any of those depositions
20 involve one or more of the Brevet entities?

21 A. Yes.

22 Q. Can you tell me about those
23 litigations?

24 A. I recall one that is related to
25 an asset transaction.

1 D. MONTICCIOLO

2 Q. Which asset transaction is
3 that?

4 A. The exact name of it.
5 We have deal names for these
6 things. I couldn't tell you the exact deal
7 name on it. It's an old transaction.

8 Q. Yes, that's okay, if you don't
9 recall the exact deal name, that's fine, if
10 you can just describe for me briefly what
11 the deal involved?

12 A. Again, I am not that actively
13 involved in those actions at the business,
14 because I am the CEO and the team is doing
15 it.

16 So it involves -- let's see if
17 I recall. It involves a claim on, I
18 believe, an insurance company related to a
19 borrower.

20 Q. And what is the role that one
21 or more of Brevet entities plays in that
22 litigation; are they a defendant as well?

23 A. No, we are a plaintiff.

24 Q. Okay. You are asserting a
25 claim against an insurance company?

1 D. MONTICCIOLO

2 A. You would have to ask my team
3 on the specifics, but we are a plaintiff.

4 Q. So you don't know one way or
5 the other whether as a plaintiff you are
6 asserting a claim against an insurance
7 company in that litigation?

8 A. I would think if we are a
9 plaintiff, we are.

10 Q. As would I.

11 Okay, are there any other
12 litigations in which you sat for deposition
13 that you -- in the recent years that you
14 can recall that involve Brevet?

15 A. No.

16 Q. When did you sit for deposition
17 in the litigation involving the insurance
18 company? Approximately.

19 A. Sometime in the last couple of
20 months.

21 Q. Were you asked questions about
22 your role in connection with the
23 transaction at issue?

24 A. As I sit here, I don't recall
25 specifically.

1 D. MONTICCIOLO

2 Q. Well, it sounds like you have
3 enough experience with depositions that we
4 can cut the ground rules relatively short.

5 I take it the last deposition
6 you sat for in the last couple of months
7 was a remote deposition that was conducted
8 via videoconference.

9 A. Yes.

10 Q. Okay. So you have the
11 distinction amongst the many witnesses we
12 have deposed to be one of the few who has
13 had that experience, so that will make this
14 hopefully more efficient than usual. But
15 let me just quickly review the ground
16 rules, you will tell me if there are any
17 that you don't understand.

18 I will be asking you some
19 questions today, if you can't hear me, if
20 you need me to repeat a question or you
21 otherwise don't understand a question that
22 I have asked, you will let me know, okay?

23 A. Okay.

24 Q. After I ask a question, your
25 counsel, Mr. Solomon, may state an

1 D. MONTICCIOLO

2 objection for the record, usually using
3 words like objection or objection to form,
4 you should allow him to get that on the
5 record and then go ahead and answer the
6 question after the objection, unless you
7 are specifically instructed not to answer
8 the question; does that make sense?

9 A. Yes.

10 Q. Okay. And the court reporter
11 is typing everything that you are saying in
12 order to generate a transcript, so it's
13 important that you provide verbal responses
14 instead of, say, nodding your head or
15 something like that, okay?

16 A. Yes.

17 Q. And, finally, if you would like
18 to take a break, please just say so, I am
19 happy to try to accommodate that; if there
20 is a question pending or a line of
21 questioning that I am trying to finish, I
22 would ask to try and finish that up and
23 then we will break, but otherwise I am
24 happy to try to work within the constraints
25 of your own needs and scheduling over

1 D. MONTICCIOLO

2 there, subject to the caveat that my
3 understanding is that, as Mr. Solomon
4 communicated to us yesterday, you would
5 like to be out of here by a set time, so we
6 are going to do our best to try to get
7 through the deposition before then, but
8 that probably will mean trying to keep
9 breaks to a minimum.

10 A. Okay.

11 Q. Is there any reason that you
12 are aware of that you would be unable to
13 provide competent, truthful testimony
14 today?

15 A. No.

16 Q. Any medications or conditions
17 that affect your memory?

18 A. No.

19 Q. I think we said this at the
20 outset, I just don't recall whether it was
21 on the record, so just to make sure that it
22 is, because this is a remote deposition, I
23 want to just clarify for the record your
24 surroundings, you are located at Reed
25 Smith's New York City offices today; is

1 D. MONTICCIOLO

2 that right?

3 A. Yes.

4 Q. And you are in a conference
5 room with your counsel, Mr. Lou Solomon and
6 Monica Yang; is that right?

7 A. Yes.

8 Q. Is there anybody else in the
9 room with you today?

10 A. No.

11 Q. Okay. Do you have any
12 documents relating to this case in the room
13 with you today?

14 A. No.

15 Q. Okay. Can you agree to refrain
16 from checking or using your phone or
17 computer to communicate with anybody while
18 we are on the record?

19 A. Yes.

20 Q. Okay. And you understand that
21 you are here both as a defendant in this
22 action and as a 30(b)(6) witness?

23 A. Yes.

24 Q. Okay. And who is paying your
25 attorneys' fees as a defendant in this

1 D. MONTICCIOLO

2 action?

3 A. Brevet is.

4 Q. Is your counsel the Reed Smith
5 firm?

6 A. Yes.

7 Q. Any other attorneys
8 representing you in your personal capacity
9 in connection with this action?

10 A. No.

11 Q. Do you know which Brevet entity
12 is paying Reed Smith's fees?

13 A. It's one of the Brevet
14 entities.

15 Q. I understand that, do you know
16 which one in particular?

17 A. No.

18 Q. Who would make that
19 determination?

20 A. Our finance department.

21 Q. And on what basis would your
22 finance department decide which of the
23 Brevet entities would be actually covering
24 the attorneys' fees for your defense of
25 this action?

1 D. MONTICCIOLO

2 A. You would have to ask them.

3 Q. They wouldn't be consulting
4 with you on that question?

5 A. There is policies and
6 procedures for how it's done.

7 Q. What are the policies and
8 procedures that you are aware of that would
9 determine which Brevet entity would cover
10 the attorneys' fees for you or for
11 Mr. Callahan who are named individually in
12 a lawsuit?

13 A. It would be in our broad firm
14 policies about expenses and allegations,
15 which you could -- would have to ask the
16 finance people on the details of that.

17 Q. So your finance people consult
18 with whatever policies you just referenced
19 and they make the determination without
20 your involvement as to what entity is going
21 to be paying the attorneys' fee that you
22 incur in connection with this lawsuit; is
23 that a summary of what your testimony was?

24 MR. SOLOMON: I object to the
25 question.

1 D. MONTICCIOLO

2 A. Could you say the question
3 again?

4 Q. Sure. So your finance
5 department would consult the policies and
6 procedures that you just referenced and
7 make a determination as to which Brevet
8 entity is covering the attorneys' fees for
9 individual defendants like yourself who are
10 named in a lawsuit; is that a fair summary
11 of your testimony?

12 MR. SOLOMON: Same objection.

13 A. I can't specifically answer
14 that, that question. They do their job
15 according to their professionalism, skills.

16 Q. Yes, I am not asking you to
17 assess their performance. Let me try to
18 rephrase, it maybe it wasn't clear. I am
19 just trying to make sure I understood what
20 you had responded to me.

21 You are not involved in the
22 determination of which entity is covering
23 the attorneys' fees that are incurred in
24 connection with Reed Smith's defense of
25 this action on your behalf, correct?

1 D. MONTICCIOLO

2 A. Yes.

3 Q. And it's your understanding
4 that that determination is made by the
5 Brevet finance department, correct?

6 A. And with whatever resources
7 they require to make that proper decision.

8 Q. And the resources that you are
9 aware of, sitting here today, would be a
10 policies and procedures manual that would
11 speak to this issue?

12 A. And whatever third-party
13 consultants, lawyers, regulators that they
14 would have to check with.

15 Q. Is it fair to say that there
16 are many different Brevet entities that
17 might be covering your attorneys' fees
18 today?

19 A. I couldn't answer that
20 question. I don't know.

21 Q. Well, is there one specific
22 entity that you think is covering your
23 attorneys' fees today?

24 A. I don't want to guess.

25 Q. Well, as between there being

1 D. MONTICCIOLO

2 one that you are aware of or being many
3 options that you are not aware of, which
4 one is the correct one, which of those is
5 the correct statement of your understanding
6 as to who is covering your attorneys' fees
7 for the defense of your -- the action
8 against you?

9 MR. SOLOMON: I object to the
10 question.

11 A. I don't understand the
12 question, could you say that again?

13 Q. I am trying to understand
14 whether you do know that there is a
15 particular entity that is covering your
16 attorneys' fees or whether in your mind
17 there are many different Brevet entities
18 that are candidates for covering your
19 attorneys' fees and you don't know which it
20 is?

21 A. Correct, there are Brevet
22 entities that are paying the legal fees.

23 Q. And you don't know which Brevet
24 entity is doing so, correct?

25 A. I am not in the finance

1 D. MONTICCIOLO

2 department.

3 Q. So you don't know, sitting here
4 today, which Brevet entity is covering your
5 attorneys' fees, correct?

6 MR. SOLOMON: Asked and
7 answered.

8 MR. CYRULNIK: I think it's
9 true, but the answer was there are
10 many different Brevet entities, I
11 think, so that really didn't respond
12 to my question, that is why I had to
13 ask it again.

14 Q. Mr. Monticciolo, is that right,
15 you don't know which of the Brevet
16 entities, sitting here today, is covering
17 your attorneys' fees?

18 A. I don't know which specific
19 Brevet entity is covering the legal fees.

20 Q. Okay. What did you do to
21 prepare for today's deposition?

22 A. I reviewed some of our policies
23 and procedures and just skimmed through the
24 pleadings and court materials.

25 Q. When you say court materials,

1 D. MONTICCIOLO

2 are you referring to documents that were
3 filed on the dockets in the various court
4 proceedings?

5 A. Yes.

6 Q. Okay. And did you review those
7 documents that you just described on your
8 own?

9 A. Yes.

10 Q. Okay. How did you select the
11 documents that you were going to review on
12 your own?

13 A. We -- I actually -- we had a
14 composition of documents that -- with all
15 the court filings, what do you call it, the
16 pleadings.

17 Q. And did you go through all of
18 them or how did you go about selecting
19 which ones you would review and which ones
20 you wouldn't?

21 A. I had our internal counsel help
22 me choose which ones.

23 Q. Okay. And same thing with
24 respect to policies and procedures, did you
25 review all Brevet policies and procedures

1 D. MONTICCIOLO

2 from all different time periods or only a
3 select subset of the policies and
4 procedures?

5 A. As I said, I had a -- I
6 reviewed, I didn't extensively investigate
7 them.

8 Q. Were there particular sections
9 of the policies and procedures that you did
10 review that you were focussing on?

11 A. Yes.

12 Q. And what were those sections?
13 And if you don't recall the section number,
14 that is fine, you can just describe to me
15 the subject matter.

16 A. Policies related to compliance,
17 code of ethics, handbook confidentiality,
18 company assets, nondisclosure rights,
19 e-mail retention, amongst others.

20 Q. Okay. And any others come to
21 mind, specific ones?

22 A. We have a lot of policies and
23 procedures.

24 Q. Sure, I appreciate that. My --
25 I am just asking, you provided me,

1 D. MONTICCIOLO

2 helpfully provide me a list of the specific
3 topics that you recall looking to review,
4 were there any others, because you said at
5 the end amongst others, I just want to make
6 sure, were there any others that you,
7 sitting here today, recall looking at in
8 particular?

9 A. Yes.

10 Q. What were those?

11 A. Transaction policies.

12 Q. Transaction policies meaning
13 policies -- I'm sorry, I didn't mean to cut
14 you off, I just wanted to make it
15 efficient.

16 When you say transaction
17 policies, are you referring to the policies
18 Brevet has in connection with onboarding a
19 transaction?

20 A. They are called transaction
21 policies, which is -- covers more than
22 that, transaction policies.

23 Q. Can you briefly describe what
24 transaction policies means in your mind?

25 A. Not in my mind. They're

1 D. MONTICCIOLO

2 transaction policies about how we do our
3 transaction.

4 Q. Okay, where are those
5 transaction policies generally found?

6 A. They are available on a shared
7 drive to all employees.

8 Q. And is it its own standalone
9 document or is it part of a broader manual
10 or a compilation of documents?

11 A. It stands alone as part of a
12 compilation of policies and procedures.

13 Q. Okay. And is it in a folder on
14 a shared drive that houses other policies
15 and procedures for the company?

16 A. Yes.

17 Q. And what is the name of that
18 folder, if you recall?

19 A. I don't recall.

20 Q. And is the name of the file
21 that you are referring to transaction
22 policies or something to that effect?

23 A. I don't recall.

24 I am quite sure we produced
25 those for you.

1 D. MONTICCIOLO

2 Q. Okay. Yeah, it's certainly
3 possible. I just want to know which one
4 you have in mind so that we can look at it.

5 Okay, do those transaction
6 policies, for example, set forth the size
7 of the transactions that Brevet is looking
8 to consider and the size of the
9 transactions that it's not looking to
10 consider?

11 A. They are policies and
12 procedures. We don't have things like size
13 limits.

14 Q. Well, so it does not -- the
15 transaction policies that you are referring
16 to do not identify, for example, criteria
17 that Brevet is looking for in connection
18 with its consideration of various
19 prospective transactions; is that right?

20 A. Correct.

21 Q. Okay. They refer more towards
22 the logistics and various steps that
23 employees of Brevet are supposed to take in
24 connection with considering and onboarding
25 a prospective opportunity?

1 D. MONTICCIOLO

2 A. As I sit here, I would say that
3 is correct.

4 And we have produced those, as
5 I said.

6 Q. Okay. You don't have any
7 written policies, manuals or the like that
8 describe the different criteria that Brevet
9 is looking for in connection with
10 prospective investments?

11 A. We do.

12 Q. What would the name of that
13 document or compilation be that would
14 contain those criteria?

15 A. We have a credit policy and we
16 have an investment committee.

17 Q. Okay, a credit policy is a
18 written set of policies; is that correct?

19 A. Correct.

20 And I am sure we have produced
21 those for you, as well.

22 Q. Okay. And when you referenced
23 the second thing, investment committee,
24 that is not a written set of policies, you
25 are just referring to the fact that you

1 D. MONTICCIOLO

2 have a committee that was formed for the
3 purpose of applying -- I guess implementing
4 and applying the criteria that I was asking
5 you about, that is the criteria that Brevet
6 would be looking to use in considering
7 whether to invest in a particular
8 opportunity?

9 A. No.

10 Q. Did you say no?

11 A. I said no.

12 Q. So that's not what you meant
13 when you were referring to an investment
14 committee, can you describe to me what you
15 did mean when you responded to my prior
16 question by listing the investment
17 committee in addition to the other
18 document?

19 A. Yes. And I believe we provided
20 information on this as, well.

21 The investment committee makes
22 the investment decisions, suitability
23 (inaudible).

24 MR. CYRULNIK: Sorry, I'm
25 getting some background noise.

1 D. MONTICCIOLO

2 THE VIDEOGRAPHER: Ms. Levine,
3 can you please mute.

4 MS. LEVINE: My apologies.

5 Q. Can you repeat the end of your
6 answer, Mr. Monticciolo? Sorry, it was
7 inaudible for me.

8 A. If I can remember.

9 The investment committee makes
10 the suitability and investment decision.

11 Q. So, the investment committee
12 that you referenced, you did intend to
13 reference the fact that you had a
14 committee, not a particular set of
15 documents that are called investment
16 committee, correct?

17 A. There are definitions of
18 various committees and what they do in our
19 policies and procedures, which we produced
20 for you, but you asked me what the
21 committee does.

22 Q. Okay. I think we may have just
23 asked slightly different questions, but
24 that is fine, I appreciate your efforts to
25 answer the question that you thought I was

1 D. MONTICCIOLO

2 asking.

3 Can you describe for me what
4 you mean by suitability?

5 A. The investment committee makes
6 the decision is the investment suitable
7 consistent with the fund's investment
8 pieces.

9 Q. Would one of the factors that
10 the investment committee would consider in
11 making those decisions be the profitability
12 of a prospective transaction?

13 A. It could be.

14 Q. What about the size of the
15 prospective transaction?

16 A. It could be.

17 Q. What about the costs associated
18 with, the transaction costs associated with
19 the prospective transaction?

20 A. It could be.

21 Q. Okay. Did you speak to anyone
22 other than your counsel about today's
23 deposition?

24 A. Other than telling my wife that
25 I was going to it.

1 D. MONTICCIOLO

2 Q. Common answer. Yes, other than
3 telling your wife that you were going to be
4 deposed today, did you speak to anybody
5 about today's deposition other than your
6 counsel?

7 A. No.

8 Q. It's always good for our wives
9 to know where we are.

10 Did you attend any depositions
11 in this matter apart from the one you are
12 attending today?

13 A. No.

14 Q. Have you reviewed any
15 transcripts from depositions that were
16 taken in this matter?

17 A. No.

18 Q. Have you received any summaries
19 of testimony that has been given in this
20 matter to date?

21 A. No.

22 Q. Do you know who has been
23 deposed in this matter other than you?

24 A. As I sit here, I can't recall
25 who has been deposed yet, but.

1 D. MONTICCIOLO

2 Q. Do you know whether Mark
3 Callahan has been deposed?

4 A. Yes.

5 Q. And how do you know that?

6 A. Because he was unavailable.

7 Q. Because he was unavailable
8 when?

9 A. That is a good question.
10 Monday earlier this week.

11 Q. Oh, I see. He was unavailable
12 and the reason he was unavailable was
13 because he was sitting for deposition?

14 A. His calendar said he was
15 sitting for a deposition, yes.

16 Q. Got it, okay.
17 Did you speak to Mr. Callahan
18 about his deposition, either before, during
19 or after his deposition?

20 A. No.

21 Q. Do you know whether
22 Mr. Iacovacci has been deposed in this
23 litigation?

24 A. Yes.

25 Q. And how do you know that?

1 D. MONTICCIOLO

2 A. Because I know that it was in
3 the calendar, as well, that mine couldn't
4 be yesterday so it had to be today because
5 Paul was being deposed yesterday.

6 Q. Got it.

7 And have you seen any accounts
8 of any of the testimony that Mr. Iacovacci
9 gave yesterday, either a transcript,
10 summaries or anything else?

11 A. No.

12 Q. Okay. I think you had briefly
13 described what you did to prepare for the
14 deposition by way of reference to certain
15 documents that you reviewed, can you also
16 tell me apart from the documents that you
17 described reviewing what else you did to
18 prepare for today's deposition, for
19 example, meeting with your attorneys?

20 A. Prepare for the deposition.

21 Just speak with the attorneys
22 about when, where (inaudible) and things
23 like that.

24 Q. Okay. Did you have multiple
25 meetings with your attorneys in preparation

1 D. MONTICCIOLO

2 for today's deposition?

3 A. Around scheduling and juggling
4 stuff, yes.

5 Q. Okay, approximately how many
6 meetings did you have with your attorneys
7 in preparation for today's deposition?

8 A. If you consider an e-mail and
9 talking about calendar appointments and
10 scheduling, a couple.

11 Q. Okay, if you exclude e-mails
12 concerning the scheduling of today's
13 deposition, how many times did you meet
14 with your attorneys to prepare for today's
15 deposition, if at all?

16 A. As I say, I can't recall the
17 exact number.

18 Q. What is your best, best
19 recollection?

20 A. Maybe twice.

21 Q. Okay. Let's start with the
22 first one that you recall, did you meet
23 with your attorneys yesterday, for example,
24 to prepare for today's deposition?

25 A. Yes.

1 D. MONTICCILO

2 Q. Okay. Was that an in-person
3 meeting, a videoconference, a
4 teleconference or some other option that I
5 am not thinking of?

6 A. A videoconference.

7 Q. Okay. And roughly how long did
8 that videoconference session last?

9 A. As I sit here, I can't tell you
10 exactly how long.

11 Q. More or less than three hours?

12 A. Less than three hours.

13 Q. More or less than two hours?

14 A. I, I would be guessing, but
15 shorter.

16 Q. Sorry, I missed the last word,
17 you said you would be guessing but you
18 thought it was shorter than two hours?

19 A. Correct.

20 Q. Okay, was it longer than an
21 hour?

22 A. Again, I, as I sit here, I
23 can't recall that.

24 Q. Okay. Who was present for that
25 meeting, apart from yourself?

1 D. MONTICCIOLO

2 A. Lou Solomon and Monica Yang.

3 Q. Okay. What time did that
4 meeting take place?

5 A. Sometime in the morning, I
6 believe.

7 Q. Okay.

8 A. I don't recall exactly.

9 Q. Okay. Apart from the three
10 people that we just mentioned, yourself,
11 Lou and Monica, anyone else present for
12 that meeting, to your knowledge?

13 A. As I sit here, I don't recall.

14 Q. Okay. Apart from the meeting
15 you described yesterday with Mr. Solomon
16 and Ms. Yang via videoconference, what
17 other meetings, if any, do you recall
18 having with your attorneys to prepare the
19 for today's deposition?

20 A. There were meetings around the
21 calendar scheduling.

22 Q. Yes, thanks for reminding me.
23 Let's exclude those.

24 With the exception of -- you
25 know, if you take out of the equation

1 D. MONTICCIOLO

2 meetings that exclusively concerned
3 scheduling, what, if any, other meetings
4 did you have with your counsel to prepare
5 for today's deposition?

6 A. As I sit here, I don't recall
7 if it was anything about; it was more just
8 scheduling and processes, like where we go,
9 what we do.

10 Q. Okay. Did you review documents
11 during the meeting or meetings that you
12 recall having with your counsel?

13 A. I -- let's see. I think so.

14 Q. Okay.

15 A. I don't recall.

16 Q. And you are thinking of the
17 meeting that you had, you know, less than
18 24 hours ago, you don't recall whether you
19 reviewed documents?

20 A. I have a very busy schedule and
21 I review lots of materials and documents
22 every day, this is not the top of my list.

23 Q. Understood. So the answer to
24 my question is yes, you don't recall
25 whether you reviewed documents in the

1 D. MONTICCIOLO

2 meeting that you had yesterday morning?

3 A. Again, I don't recall, as I sit
4 here.

5 Q. Okay. I would like to just
6 briefly go through the structure of the
7 Brevet companies and we will try to do this
8 as efficiently as possible. Before I do, I
9 want to make sure we are on the same page.

10 Do you understand that you have
11 been designated as a corporate
12 representative to testify on behalf of
13 Brevet, various Brevet entities in
14 connection with five topics that were
15 listed on our 30(b)(6) notice?

16 A. Yes.

17 Q. Okay. And what did you do to
18 prepare to serve as the company's corporate
19 representative in connection with that
20 30(b)(6) representation?

21 A. I think that is the same
22 question you asked before, which was I
23 reviewed some of the policies and
24 procedures and things related to those five
25 items.

1 D. MONTICCIOLO

2 Q. Did you speak with anyone other
3 than your counsel about those five topics,
4 did you do any investigations or anything
5 to that effect?

6 A. As I sit here, I don't think
7 so.

8 Q. Okay. Do you recall the topics
9 that you prepared to be a 30(b)(6) witness
10 on?

11 A. Off the top of my head, you
12 know, not all five.

13 Q. That is fair. Can you describe
14 for me the ones that you do recall or the
15 general subject matter in which you
16 prepared to serve as a 30(b)(6) witness
17 today?

18 A. As I said earlier, I reviewed
19 things related to the policies, procedures,
20 the handbooks, things like code of ethics,
21 retention policies, et cetera.

22 Q. Yes, thanks. I wasn't asking
23 what you reviewed, my question was a little
24 different. I am just asking do you recall
25 the topics for which you prepared to serve

1 D. MONTICCILO

2 as a 30(b)(6) witness today.

3 A. Yes, I recall that the topics
4 were encompassed in part in those policies,
5 things like trade secrets and policies and
6 procedures around how to handle Brevet
7 information.

8 Q. I see, okay. Anything else you
9 recall about the topics in which you
10 prepared to be a 30(b)(6) witness today?

11 A. Not as I sit here.

12 Q. Okay. Prior to starting the
13 Brevet companies, you were at Lehman
14 Brothers for a period of time; is that
15 right?

16 A. Yes.

17 Q. And what was your position at
18 Lehman Brothers?

19 A. I was -- as I sit here, I don't
20 actually recall my exact title,
21 interestingly. I think I was the managing
22 director in fixed income. I am guessing.

23 Q. That's what resumes are for.

24 Okay. And do you recall the
25 circumstances that gave rise to your

1 D. MONTICCIOLO

2 leaving Lehman Brothers?

3 A. Yes.

4 Q. Can you briefly describe those?

5 A. I had a job offer from Deutsche
6 Bank.

7 Q. Okay. And did that involve a
8 promotion of sorts from the position you
9 had at Lehman?

10 A. I would think so.

11 Q. Okay. You met Mr. Callahan at
12 Lehman Brothers; is that right?

13 A. Yes.

14 Q. Okay. And do you recall the
15 position that you took when you left Lehman
16 to join Deutsche?

17 A. As I sit here, I can't recall
18 the exact title, but it was to apply my
19 skills in a similar but broader area than
20 Lehman.

21 Q. Do you recall any of the titles
22 that you held at Deutsche Bank?

23 A. As I sit here, it was 20 plus,
24 almost 25 years ago, I couldn't tell you
25 the exact title without guessing.

1 D. MONTICCIOLO

2 Q. Okay. Did you bring
3 Mr. Callahan over with you from Lehman
4 Brothers to Deutsche Bank?

5 A. No.

6 Q. Did he follow you to Deutsche
7 Bank?

8 A. He came to Deutsche Bank, yes.

9 Q. Is the distinction you are
10 drawing that you didn't have a role in
11 Mr. Callahan's leaving Lehman and joining
12 Deutsche Bank, to your knowledge?

13 A. I didn't say I didn't have a
14 role; I didn't actively recruit him.

15 Q. Okay. Did he actively seek out
16 a job with you once you moved over to
17 Deutsche?

18 A. As I sit here, it's 25 years
19 ago, if I recall, he was interested in
20 leaving Lehman.

21 Q. And he reached out to you?

22 A. Again, it was 25 years ago, as
23 I sit here, I can't remember who called
24 whom first. He was a friend.

25 Q. Okay. But you do recall that

1 D. MONTICCIOLO

2 you were his point of contact, whether it
3 was you calling him or him calling you, you
4 were his point of contact for his
5 prospective move over from Lehman to
6 Deutsche?

7 A. As I sit here, I think that
8 would be speculation; I don't know if he
9 had other contacts.

10 Q. Okay. How long were you at
11 Deutsche Bank?

12 A. Again, it's 25 years ago, so as
13 I sit here, I would say two to three years.

14 Q. Okay. Would you describe your
15 relationship with Mr. Callahan at Deutsche
16 Bank as close; were you close with
17 Mr. Callahan during that period?

18 A. Could you clarify what close
19 would be?

20 Q. Sure. I am just asking for
21 your, sort of your characterization, would
22 you characterize your relationship as you
23 and Mr. Callahan were close during that
24 period?

25 A. I would characterize that as we

1 D. MONTICCIOLO

2 had a known working relationship, so he was
3 someone I knew better than others, yes.

4 Q. Okay. Were you friendly with
5 him?

6 A. Yes.

7 Q. Okay. And what were the --
8 what was the reason you decided to leave
9 Deutsche Bank?

10 A. Deutsche Bank restructured.

11 Q. Okay. Was your department or
12 position being eliminated?

13 A. Yes.

14 Q. Was it the department or the
15 position or both?

16 A. It was, you know, it's 25 years
17 ago, I don't recall if they -- which it
18 was.

19 Q. Okay. Was Mr. Callahan working
20 in your department at that time?

21 A. Again, as I sit here, I don't
22 recall the details, but I don't believe so.

23 Q. Okay. And when you left
24 Deutsche Bank, had you been offered other
25 positions in other departments at Deutsche

1 D. MONTICCIOLO

2 Bank?

3 A. Again, this is a long time ago.
4 There was a lot of interest for my
5 employment.

6 Q. But you don't recall whether
7 any of that interest was at a different
8 department at Deutsche Bank or whether it
9 was from other prospective employers?

10 A. Correct.

11 Q. Okay. And you decided to start
12 your own company at that point in time?

13 A. Correct.

14 Q. And that is a company that
15 ultimately led to the Brevet family of
16 companies?

17 A. Yes.

18 Q. It wasn't called Brevet at
19 first; the first entity you started had a
20 different name, right?

21 A. Yes.

22 Q. What was that name?

23 A. As I sit here, I can't tell you
24 exactly which the first name was, because
25 there were several as we initially grew.

1 D. MONTICCIOLO

2 Q. Okay. Do you know the first
3 Brevet company that you started with the
4 name Brevet?

5 A. As I sit here, I can't tell you
6 exactly which one we started first.

7 Q. How did you come up with the
8 name Brevet?

9 A. I believe it was more than the
10 one hundredth name that we had tried.

11 It's --

12 Q. Okay.

13 A. -- a bicycling term.

14 Q. Apart from just trying a bunch
15 of names, any other explanation as to how
16 the letters B, R, E, V, E, T got put in
17 that order and fit your company?

18 A. Brevet is a term used in a
19 group called -- a road bicycling group
20 called de Randonneurs, a French
21 organization that rides -- precedes the
22 Tour de France, which does a 1200-mile ride
23 every four years called the
24 Paris-Brest-Paris of which to qualify for
25 that you have to meet certain goals and

1 D. MONTICCIOLO

2 achievements called brevets.

3 Q. Okay. The mystery has been
4 cleared up, many years into this
5 litigation.

6 Okay, did you start Brevet on
7 your own or did you have partners when you
8 first started it?

9 A. It was a long time ago.

10 As I sit here, I believe I
11 started it initially.

12 Q. So, initially, you were the
13 sole owner of the companies that you
14 initiated?

15 A. Yeah, as I sit here, I can't
16 recall. It was 23 years ago.

17 Q. So you don't know one way or
18 the other whether or not you were the
19 100 percent owner of the first entity that
20 you created?

21 A. Correct.

22 We have had a lot of entities
23 over the years.

24 Q. You are familiar with the
25 entity Brevet Holdings, LLC?

1 D. MONTICCIOLO

2 A. Yes.

3 Q. And that entity is owned by
4 whom?

5 A. [REDACTED].

6 Q. And what is the equity split?

7 A. [REDACTED]
8 [REDACTED].

9 Q. Has that always been the split
10 of that particular entity, [REDACTED]
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]?

12 A. As I sit here, I believe so.

13 Q. What is your [REDACTED]
14 [REDACTED]

15 A. Yes.

16 Q. How did it come to be that [REDACTED]
17 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
18 [REDACTED] [REDACTED] [REDACTED]?

19 A. As I sit here, if I recall,
20 it's for simplicity of tax filings.

21 Q. Can you describe how the
22 [REDACTED] [REDACTED] ownership makes the
23 tax filings simpler?

24 A. As I sit here, I am not a tax
25 specialist, [REDACTED] [REDACTED] [REDACTED], but it just

1 D. MONTICCIOLO

2 makes it so that it's simpler to file
3 taxes, from my recollection.

4 Q. Was that her idea?

5 A. As I sit here, I couldn't tell
6 you that.

7 Q. Is she a tax -- is she an
8 accountant?

9 A. No.

10 Q. What's -- I think you described
11 her as a tax specialist, unless I
12 misunderstood, [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] ?

13 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

15 Q. Got it, okay.

16 And Brevet Holdings, LLC owns a
17 subsidiary called Brevet Capital
18 Management, LLC; is that right?

19 A. As I sit here, I couldn't tell
20 you if it directly owns it or not.

21 Q. You don't know, one way or the
22 other, whether Brevet Holdings directly
23 owns Brevet Capital Management?

24 A. As I said, I can't tell you as
25 I sit here.

1 D. MONTICCIOLO

2 I am sure we have produced
3 those materials for you, how the entities
4 are owned.

5 Q. Yeah, I am just asking for your
6 understanding or recollection, so if you
7 don't know, that's fine, just let me know.

8 Brevet Capital Management is
9 the investment manager for various funds in
10 the Brevet family of companies; is that
11 right?

12 A. Yes.

13 Q. And what is your role in, let's
14 start with Brevet Holdings, do you have a
15 role or title in Brevet Holdings, LLC?

16 A. Yes.

17 Q. And what is it?

18 A. As I sit here, I would have to
19 confirm to be sure, but I believe it's
20 managing member.

21 Q. Okay. Do you know if there are
22 any other managing members of Brevet
23 Holdings, LLC?

24 A. As I sit here, I couldn't tell
25 you.

1 D. MONTICCIOLO

2 Q. So there could be?

3 MR. SOLOMON: I object to the
4 question.

5 A. As I said, right now, as I sit
6 here, I couldn't tell you. But I am sure
7 we have produced this for you.

8 Q. The only other member of Brevet
9 Holdings, LLC would be your wife Michelle,
10 correct?

11 A. I -- actually, as I sit here, I
12 couldn't tell you.

13 Q. Are you certain, then, just
14 going back to your last set of answers, are
15 you certain that Brevet Holdings, LLC is
16 owned 99 percent by you and 1 percent by
17 Mrs. Monticciolo?

18 A. As I sit here, I believe that
19 to be correct.

20 Q. Okay, so as you sit here, you
21 believe that you and Mrs. Monticciolo are
22 the only two members of Brevet Holdings,
23 LLC; is that right?

24 A. Correct.

25 But, again, as I sit here,

1 D. MONTICCIOLO

2 there are people in the firm whose job it
3 is to maintain things like corporate
4 structure.

5 Q. Yeah, thanks for flagging that.
6 I did want to ask you, who is in charge of
7 maintaining the organizational charts at
8 Brevet?

9 A. Could you repeat the question?

10 Q. Sure. Who is in charge of
11 maintaining the organizational charts at
12 Brevet?

13 A. As I sit here, I recall it's
14 the [REDACTED] department.

15 Q. Okay. And has that -- has the
16 department charged with maintaining the
17 company's corporate or organizational
18 structures, has that changed over the years
19 or, to your recollection, it's always been
20 the compliance department?

21 A. As I sit here, I couldn't tell
22 you, because the company has grown and
23 evolved.

24 Q. Do you recall any department
25 other than the [REDACTED] department being

1 D. MONTICCIOLO

2 tasked with maintaining Brevet's
3 organizational charts?

4 A. As I said, we have been around
5 for 23 years, as I sit here, I couldn't
6 tell you specifically.

7 Q. So, just to make sure I have
8 your testimony correct, Mr. Monticciolo,
9 sitting here today, to your knowledge, the
10 only department that you recall being
11 tasked with maintaining Brevet's
12 organizational charts has been the
13 [REDACTED] department, correct?

14 A. I did not say that.

15 Q. Okay. I am glad I followed up.
16 So, sitting here today, you do
17 remember a department other than the
18 [REDACTED] department being tasked with
19 maintaining Brevet's organizational charts?

20 A. No. That is not what I said.

21 Q. I think I just covered the only
22 two options that I could think of, so why
23 don't I just ask it more open ended and you
24 can give me your answer.

25 Sitting here --

1 D. MONTICCIOLO

2 A. The --

3 Q. Oh, sorry, go ahead.

4 A. Please.

5 Q. Sitting here today, can you
6 identify all of the departments that you
7 recall being tasked with maintaining
8 Brevet's organizational charts?

9 A. As I sit here today, I cannot
10 identify all of the departments that have
11 been responsible for that over the 23 years
12 of our business.

13 Q. Yeah, maybe it's a phrasing
14 thing. I would like you to please identify
15 the departments that you are aware of,
16 sitting here today, or that you recall,
17 sitting here today, having been involved
18 with maintaining Brevet's organization
19 charts.

20 And I believe you have already
21 identified the [REDACTED] department,
22 correct?

23 A. Correct.

24 So, as I sit here today, over
25 time, there has been a [REDACTED] department and

1 D. MONTICCIOLO

2 there have been others; I do not recall if
3 they were charged specifically with
4 maintaining the organizational chart back
5 that many years ago.

6 Q. Okay. Your best guess is that
7 in, say, 2016 time period, the department
8 that would have been tasked with
9 maintaining the company's organizational
10 charts was the [REDACTED] department; is
11 that fair?

12 A. Again, I did not say that. I
13 am not going to guess. You can ask our
14 compliance people. I think you said you
15 deposed other people.

16 Q. Yeah, I am only asking for your
17 recollection. So if the answer is I don't
18 know, you will tell me you don't know.

19 My question is, to the best of
20 your knowledge, was the [REDACTED]
21 department the department that was tasked
22 with maintaining the company's
23 organizational charts in or about the 2016
24 time period.

25 MR. SOLOMON: Asked and

1 D. MONTICCIOLO

2 answered.

3 A. Yes, as I've said, I don't
4 recall, as I sit here today, back five,
5 six years ago who was specifically in
6 charge of that.

7 Q. So you don't know?

8 A. I said I don't recall.

9 Q. Sitting here today, you can't
10 tell me who was tasked with maintaining the
11 company's organizational charts in 2016?

12 A. Correct.

13 Q. Okay. What's your -- do you
14 have a role or a title at Brevet Capital
15 Management, LLC?

16 A. Yes.

17 Q. And what is your role or title?

18 A. CEO and CIO.

19 Q. And Brevet Capital Management
20 receives payments from numerous other
21 Brevet entities; is that right?

22 A. That's a very vague question,
23 can you repeat or clarify?

24 Q. Sure, I can certainly repeat
25 it. If there is any particular

1 D. MONTICCIOLO

2 clarification that would be helpful, please
3 let me know.

4 But I am just asking generally
5 whether or not Brevet Capital Management,
6 as an investment manager, receives payments
7 from other Brevet-affiliated entities.

8 A. In a vague statement of Brevet,
9 yes.

10 Q. Okay. It receives, for
11 example, fees from various funds, Brevet
12 funds?

13 A. Yes.

14 Q. Okay. Does it receive payments
15 from Brevet's onshore funds?

16 A. Yes.

17 Q. Does it receive payments from
18 Brevet's offshore funds?

19 A. Yes.

20 Q. Okay. Is it your understanding
21 that you owe a fiduciary duty to each of
22 the Brevet entities with which -- with
23 respect to which you hold a title?

24 A. I'm sorry, could you repeat the
25 question?

1 D. MONTICCIOLO

2 Q. Sure. Is it your understanding
3 that you owe fiduciary duties to each of
4 the Brevet entities for which you hold a
5 title?

6 A. For each of the fiduciary
7 duties related to those entities, yes.

8 Q. And can you tell me your
9 understanding of what it means to owe
10 fiduciary duties?

11 A. It means I have a fiduciary
12 duty to an entity.

13 Q. What is your understanding of
14 what it means to have a fiduciary duty?

15 A. It means I have an obligation
16 to follow certain rules and follow certain
17 guidelines that are consistent with that
18 organization.

19 Q. Does it involve the duty to be
20 honest to whomever you owe fiduciary
21 duties?

22 A. As I sit here, I couldn't tell
23 you if that is specifically one of them; I
24 would venture to say as a guess, yes.

25 Q. Okay, well, yeah, I don't want

1 D. MONTICCILO

2 you to guess, that's fair. I am just
3 asking whether your understanding of the
4 duties that you owe includes the duty to be
5 honest with the counterparties or entities
6 to whom you owe fiduciary duties.

7 MR. SOLOMON: I object to the
8 question. That was not the question
9 at all. You asked about fiduciary
10 duty. I object to the question.

11 MR. CYRULNIK: Yeah, I think I
12 asked a follow-up question in which
13 you may have missed; but either way,
14 that is fine. That is my question
15 now.

16 Q. You are free to answer it.

17 A. Actually, now I have forgotten
18 the question; could you repeat it? Sorry.

19 Q. Yes, sure. My question is is
20 it your understanding that you owe a duty
21 to be open and honest with anyone, an
22 entity or an individual, to whom you owe
23 fiduciary duty?

24 A. I would say that is part of
25 what a fiduciary duty is.

1 D. MONTICCIOLO

2 Q. Okay. That's fair.

3 And is it your understanding
4 that you owe fiduciary duties to your
5 comembers of the various LLCs in which you
6 own a stake?

7 A. Again, I think I said it's one
8 of the things that is a duty. It's -- I
9 wouldn't say one is more important than
10 others.

11 Q. Maybe I should rephrase the
12 question.

13 In addition to owing fiduciary
14 duties to various companies, which I think
15 you said you understood to have owed, I
16 just wanted to confirm that did you also
17 understand that you owe fiduciary duties to
18 your comembers of various LLCs.

19 A. There are some degree of
20 fiduciary duties to comembers amongst the
21 other fiduciary duties in various roles,
22 yes.

23 Q. In 2015, Mr. Iacovacci was a
24 comember of yours in several LLCs; is that
25 right?

1 D. MONTICCIOLO

2 A. No.

3 Q. You don't recall being a
4 comember with Mr. Iacovacci in any LLCs?

5 A. I do.

6 Q. Okay. Which LLCs do you recall
7 being a comember of Mr. Iacovacci's?

8 A. As I sit here, I don't recall
9 the exact names, but the two entities above
10 the onshore fund that ended in Partners and
11 Holdings.

12 Q. Okay, short --

13 A. Those two.

14 Q. Sorry, I didn't mean to cut you
15 off. But Brevet Short Duration Partners,
16 LLC and Brevet Short Duration Holdings,
17 LLC, do those sound like the two entities
18 that you had in mind?

19 A. Yes.

20 Q. Okay. And you recall being a
21 comember of Mr. Iacovacci at each of those
22 LLCs, correct?

23 A. Yes.

24 Q. Okay. And so in, let's say,
25 2015, you would agree that it was your

1 D. MONTICCIOLO

2 understanding that you owed a fiduciary
3 duty to Mr. Iacovacci, as a comember of his
4 in those two entities, correct?

5 A. No, I wouldn't agree with that.

6 I would say I owed fiduciary
7 duties to a number of parties amongst
8 Mr. Iacovacci.

9 Q. Okay. Yeah, I didn't mean to
10 exclude from, you know, by way of my
11 question owing fiduciary duties to one or
12 more other parties. I am just focusing,
13 for obvious reasons, Mr. Monticciolo, on
14 the duties you understood to have owed to
15 Mr. Iacovacci.

16 So, with that qualification,
17 you would agree with me that in 2015, it
18 was your understanding that you owed Paul
19 Iacovacci fiduciary duties in connection
20 with your respective comembership interests
21 in Brevet Short Duration Partners, LLC and
22 Brevet Short Duration Holdings, LLC, right?

23 A. Yes, I believe I had the same
24 fiduciary duties that he did.

25 MR. CYRULNIK: All right, I am

1 D. MONTICCIOLO

2 going to introduce an exhibit, so we
3 can get our feet wet with respect to
4 the Exhibit Share program. So let's
5 hope this goes well, on my end as
6 well as yours.

7 And I am going to add the stamp
8 and introduce the exhibit. We have a
9 bunch of my colleagues occupied at a
10 bunch of depositions today, so I am
11 going to be doing this myself.

12 (Whereupon, the aforementioned
13 document entitled "Corporate
14 Organizational Chart" was marked as
15 Plaintiff(s)' Exhibit 1 for
16 identification as of this date.)

17 THE WITNESS: So we have the
18 Solomon technology here.

19 MR. CYRULNIK: Yes, you guys
20 are in good hands. All right,
21 well -- yeah, that's fair.

22 So I think I just introduced
23 Exhibit 1. You tell me whether I was
24 successful. If you take a look at
25 the marked exhibits folder and

1 D. MONTICCIOLO

2 refresh it by clicking on the title
3 bar on the left, that should be the
4 best way of refreshing that folder.

5 And please tell me whether or
6 not Exhibit 1 has popped into your
7 list of exhibits.

8 MR. SOLOMON: I think it's
9 opened on the screen.

10 MR. CYRULNIK: Excellent. All
11 right, I am impressed with myself.

12 Q. And, Mr. Monticciolo, I will
13 ask you to take a moment to review this
14 organizational chart which was produced by
15 Brevet with metadata that labels it
16 March 1st of 2016 and tell me whether you
17 recognize this chart.

18 A. As I sit here, I don't
19 recognize or recall this exact chart.

20 Q. Okay, does it look like one of
21 the many organizational charts you recall
22 seeing over the years?

23 A. It has the format of one of our
24 charts.

25 Q. Okay. And if you scroll down

1 D. MONTICCIOLO

2 to page -- well, let's start with page one,
3 you have Brevet Holdings, LLC, 99 percent
4 owned by yourself and 1 percent owned by
5 your wife, as you had previously described,
6 does that seem consistent with the
7 ownership interest of Brevet Holdings, LLC
8 in March of 2016?

9 A. Again, as I can't -- sitting
10 here, I can't tell you exactly if that was
11 the case in 2016 and I don't think this
12 chart says 2016 on it.

13 Q. Yeah, so just to make sure that
14 you heard me on that one, I just wanted to
15 make the representation that this chart was
16 produced by Brevet and that in its
17 production, it has metadata that labels it
18 March 1, 2016.

19 A. Okay, so I can see that this
20 is, from what you are saying, this was a
21 file from 2016 that is a version of the
22 organizational chart.

23 Q. Okay. That is fine.

24 And you will see that it
25 indicates that Brevet Capital Management,

1 D. MONTICCIOLO

2 LLC, which I believe was an entity we were
3 talking about a few minutes ago, was
4 100 percent owned by its parent Brevet
5 Holdings, LLC; is that right?

6 A. That appears to be what the
7 chart is showing.

8 Q. Okay. Any reason to doubt that
9 in March of 2016, Brevet Capital Management
10 was 100 percent owned by Brevet Holdings?

11 A. I can't answer. As I sit here,
12 I don't know what the corporate ownership
13 was or if this was a draft or an old
14 version. But I am sure we have produced
15 that for you already.

16 Q. Yeah, I am just asking, as you
17 sit here today, do you have any reason to
18 doubt -- any reason to believe that Brevet
19 Capital Management was not owned
20 100 percent by Brevet Holdings?

21 A. I do. Because, as I said
22 before, our organization has evolved over
23 the last 23 years based on counsels' input
24 and tax and a number of other things, so I
25 don't have specific memory of exactly this

1 D. MONTICCIOLO

2 in 2016.

3 Q. Yeah, and I --

4 A. I believe we have produced
5 that.

6 Q. Yes, thank you. And I
7 understand you are testifying that you
8 don't have specific memory to corroborate
9 the particular structure that we are
10 looking at as of March 1st of 2016. My
11 question is intentionally coming at it from
12 the other direction because of the
13 testimony that you just gave about your
14 specific recollection.

15 Do you have any specific reason
16 to doubt that Brevet Capital Management was
17 owned 100 percent by Brevet Holdings on
18 March 1st of 2016; recognizing that you
19 don't have any, you know, independent
20 recollection to corroborate that that was
21 the case, do you have any specific reason
22 to doubt that that was the case, that the
23 corporate structure we are looking at on
24 this page would have been inaccurate as of
25 March 1st of 2016?

1 D. MONTICCIOLO

2 A. Yes, I do.

3 Q. Okay, can you explain to me why
4 you think that this page incorrectly
5 describes the corporate structure of the
6 four entities listed here, of one or more
7 of the four entities listed here?

8 A. As I have already answered, the
9 structure is constantly evolving, we are
10 always trying to be as tax efficient and
11 structure efficient, regulations are
12 changing. I can't recall a specific point
13 in time if back five plus years ago this
14 was the structure, because things are
15 changing. That is why I have professionals
16 to do this.

17 Q. Other than what you have just
18 described, that there were changes over the
19 course of 23 years of Brevet's history, do
20 you have any other reason to doubt the
21 accuracy of the corporate structure
22 depicted on page one of Exhibit 1?

23 A. No.

24 But I find it hard to believe
25 that there are any other reasons that, that

1 D. MONTICCIOLO

2 there could be doubt. I believe that's why
3 there would be doubt.

4 Q. Okay. Scroll down to the last
5 page of the exhibit, page four, you will
6 see a slide entitled "Brevet Funds
7 Organizational Chart," do you see that?

8 A. Just to confirm, which page are
9 you on?

10 Q. I am on the final page of
11 the -- oh, sorry, is it the final page,
12 hold on. It's the last page of the
13 exhibit. Is it page three?

14 A. Is the number at the bottom
15 different; do you know?

16 Q. Yeah, so if you scroll down to
17 the very end of the exhibit, the easiest
18 way to identify it for the record would be
19 if you look at the bottom right-hand corner
20 of the page, there is a Bates stamp that
21 ends in 23.

22 A. Hold on. Our technology person
23 here is doing something else.

24 MR. SOLOMON: Technology
25 expert.

1 D. MONTICCIOLO

2 A. Expert. Sorry, technology
3 expert. Mouse issues.

4 There it is, 7723?

5 MR. CYRULNIK: I am glad I am
6 winning the battle for now, Lou, but
7 I am not sure that I am betting on
8 myself.

9 Q. Yeah, 23.

10 A. Yes, I see the chart. Give me
11 a moment to review it.

12 Okay. Sorry, I am dyslexic, so
13 it's just a little slow there.

14 Q. No problem.

15 A. I'm sorry, I am done, I looked
16 at it.

17 Q. Okay. So you will see on this
18 page where it describes, I am focusing in
19 particular on the left-hand side of the
20 page, to the middle of the page, that is
21 the portion that is entitled "Short
22 Duration Fund" together with the middle
23 entity, Brevet Capital Management, LLC, I
24 would like to review what I am looking at
25 together with you and you will tell me if I

1 D. MONTICCILO

2 am understanding it correctly and whether
3 or not this comports with your recollection
4 of the corporate structure of Brevet with
5 respect to at least these entities in March
6 of 2017, okay?

7 A. Okay.

8 Q. Okay. So I see Brevet Capital
9 Management listed as the investment manager
10 in the middle of the page and then I see
11 some lines drawn to two different funds,
12 there is a Brevet Direct Lending Short
13 Duration Fund, LP and Brevet Direct Lending
14 Short Duration Fund, Ltd., do you see those
15 two entities and the lines connecting them
16 to Brevet Capital Management, LLC?

17 A. Yes.

18 Q. And is it your recollection
19 that Brevet Capital Management served as
20 the investment manager for each of those
21 two short duration funds?

22 In 2016.

23 A. In 2016, I don't recall if we
24 did.

25 Q. Okay. Do those two entities,

1 D. MONTICCIOLO

2 the Short Duration Fund, LP and the Short
3 Duration Fund, Ltd., exist today?

4 A. They exist today, yes.

5 Q. You just don't remember whether
6 they were both in existence in 2016; is
7 that right?

8 A. Correct.

9 Q. And is the Short Duration Fund,
10 LP, that's another way of referring to what
11 you would call the onshore short duration
12 fund; is that a fair nomenclature?

13 A. Yes.

14 Q. And Short Duration Fund, Ltd.,
15 can we refer to that as the offshore short
16 duration fund; is that a nomenclature that
17 makes sense to you?

18 A. Yes.

19 Q. Okay. Sitting here today, is
20 it your understanding that Brevet Capital
21 Management serves as the investment manager
22 for both the onshore short duration fund
23 and the offshore short duration fund?

24 A. As depicted in this chart, I am
25 not certain, but I don't believe that's

1 D. MONTICCIOLO

2 correct.

3 Q. So setting aside this chart,
4 which is a 2016 chart, I am just asking
5 about your -- the way things currently are
6 set up, is it your understanding that
7 Brevet Capital Management serves as the
8 investment manager for the onshore short
9 duration fund?

10 A. To clarify, I think you said
11 the onshore short duration fund.

12 Yes.

13 Q. And how about the offshore
14 fund, sitting here today, is it your
15 understanding that Brevet Capital
16 Management currently serves as the
17 investment manager for the offshore short
18 duration fund?

19 A. As I am sitting here today,
20 without checking with our -- with the
21 compliance people, I don't believe we are
22 direct investment manager for that vehicle.
23 This isn't the structure that we have.

24 Q. Okay, what is your best
25 recollection or understanding of the

1 D. MONTICCILO

2 relationship between Brevet Capital
3 Management investment manager on the one
4 hand and Brevet Direct Lending Short
5 Duration Fund, Ltd. on the other?

6 A. As I sit here, without -- and,
7 again, we have produced these materials for
8 you. But there are -- the offshore is not
9 as simple as this picture and that is why I
10 can't exactly answer that.

11 It's something you would have
12 to ask our compliance parties. Or I am
13 sure it's something we have produced
14 already.

15 Q. Is there more than one
16 investment manager entity at Brevet?

17 A. No.

18 Q. The only investment manager
19 entity is Brevet Capital Management, LLC,
20 right?

21 A. Yes.

22 Q. And that's an entity that is
23 registered under the Investment Advisers
24 Act?

25 A. Correct.

1 D. MONTICCIOLO

2 Q. Okay. Does each fund at Brevet
3 have an investment manager?

4 A. It does.

5 Q. Okay. Am I correct in
6 inferring from your answers to the last two
7 questions that each fund at Brevet would
8 have Brevet Capital Management, LLC serving
9 as its investment manager?

10 A. No.

11 Q. Okay. So can you explain to me
12 what I am missing; if the only investment
13 manager at Brevet is Brevet Capital
14 Management and each fund has an investment
15 manager, can you tell me how it is that one
16 or more funds would have an -- would not
17 have Brevet Capital Management serving as
18 its investment manager?

19 A. Yes. And, again, to the best
20 of my recollection and knowledge. Again,
21 you have been produced these materials, you
22 should speak with our compliances people or
23 legal people on this.

24 But there are vehicles
25 particularly for offshore that the manager

1 D. MONTICCIOLO

2 manages which may not be specifically the
3 offshore fund.

4 Q. So it's possible it's your
5 understanding that --

6 MR. CYRULNIK: Withdrawn.

7 Q. It's your understanding that
8 the offshore fund does not have an
9 investment manager but that, instead, it
10 has various vehicles that have Brevet
11 Capital Management serving as their
12 investment manager; is that -- did I
13 understand you correctly?

14 A. I hate to ask you to repeat
15 that, sorry.

16 Q. No problem. I just want to
17 make sure I understood you correctly.

18 Is it your testimony that, to
19 the best of your knowledge, the offshore
20 fund, the offshore short duration fund does
21 not have an investment manager itself but
22 instead has various vehicles that have
23 Brevet Capital Management serving as their
24 investment managers?

25 A. What I said was you should

1 D. MONTICCIOLO

2 check with the materials we have produced
3 and our compliance and legal people to get
4 the exact structure, but I, as I sit here,
5 am not confident that Brevet's investment
6 manager is directly at the Ltd., but
7 potentially at -- again, you have to look
8 at the structures from the people on what
9 it's managing maybe on behalf of the Ltd.

10 Q. I understand. And just to save
11 you some time and save some time on the
12 record, I appreciate that you may believe
13 that there are other witnesses or
14 departments that may have more knowledge
15 about certain topics and, you know, with
16 the exception of the 30(b)(6) topics, I
17 understand that you are not the be all and
18 end all in terms of testimony that we are
19 getting on some of the questions I am
20 asking.

21 That said, as I am sure
22 Mr. Solomon explained to you, I am entitled
23 to ask you questions about your
24 understanding of all of these topics. And
25 so I am only asking for your best, you

1 D. MONTICCIOLO

2 know, and honest testimony on these things.
3 If you think that there are others who
4 might have more knowledge, that's fine.

5 If I ask you who might know
6 that, that would a great time for you to,
7 you know, flag for me who else you think I
8 should be talking to. But, otherwise, I
9 really just want to get your understanding,
10 recognizing that there are going to be some
11 things that you may not understand or may
12 not recall, okay?

13 A. Okay.

14 Q. Okay. So with that
15 clarification, I appreciate that you are
16 not sure whether Brevet Capital Management,
17 LLC is the investment manager for the Ltd.
18 itself, but am I correct in understanding
19 you to say that Brevet Capital Management,
20 LLC is either the investment manager for
21 the Ltd. itself or, alternatively, the
22 investment manager for various vehicles,
23 investment vehicles that flow up to the
24 Short Duration Fund, Ltd.?

25 A. As I said, the best of my

1 D. MONTICCIOLO

2 knowledge, I believe that's a good high
3 level description of it.

4 Q. Okay. Thanks.

5 I would like to talk to you for
6 a couple of minutes about the short
7 duration loan business. Could you briefly
8 describe for me the type of business that
9 Brevet is engaged in with respect to short
10 duration loans?

11 A. We are a lender for special
12 opportunities to make loans for a variety
13 of businesses that are collateralized and
14 we believe have good risk/reward
15 characteristics.

16 Q. Okay. And in that description,
17 did you reference the duration of the loan
18 at all or was that a general description of
19 all of Brevet's lines of business?

20 A. That is a general description
21 for Brevet's lines of business.

22 Q. Okay, so if we focus on the
23 short duration piece of the business, can
24 you describe sort of what that part of the
25 business is as distinguished from any other

1 D. MONTICCIOLO

2 parts of the business?

3 A. As I sit here, I believe the
4 allocation guidelines or guidelines for
5 that vehicle are that the assets have a
6 liquidity duration target and a portfolio
7 liquidity duration target.

8 Q. And is the liquidity duration
9 target and portfolio liquidity duration
10 target for the short-term loan business a
11 particular number of years?

12 A. It is a number of months.

13 Q. Okay. Can you tell me what
14 that number of months is or what the
15 maximum duration would be?

16 A. The liquidity duration maximum
17 would be 12 months for the assets and
18 18 months for the portfolio.

19 Q. Got it. And that's for the
20 short-term duration loan business?

21 A. Correct.

22 Q. And what about the intermediate
23 duration piece of the business, is there a
24 similar liquidity duration term and
25 portfolio liquidity duration term

1 D. MONTICCIOLO

2 associated with that business?

3 A. No.

4 Q. Okay. So intermediate, does
5 that just mean longer than something that
6 would qualify for the short-term duration
7 loan business?

8 A. It could.

9 Q. Okay. Could intermediate
10 duration fund be engaging in a transaction
11 involving a liquidity duration target of
12 less than 12 months?

13 A. Yes.

14 Q. Okay. So, whereas, short
15 duration has a maximum liquidity duration
16 target and intermediate has neither a
17 minimum nor a maximum liquidity duration
18 target; is that fair?

19 A. That's fair.

20 Q. Okay. And can you just briefly
21 describe for me the difference between the
22 liquidity duration target and the portfolio
23 liquidity duration target?

24 I know that you described the
25 actual number of months as 12 versus 18,

1 D. MONTICCIOLO

2 but if you could just describe what it
3 means to have a liquidity duration target
4 versus the portfolio liquidity duration
5 target.

6 A. Portfolio liquidity duration
7 target is at the, at the time of
8 origination of assets that the portfolio,
9 the funds. Liquidity duration for its
10 assets on a weighted average basis would be
11 less than 18 months or equal to.

12 Q. The portfolio is describing a
13 variety of different deals or is it
14 describing a variety of different deals
15 with a variety of different counterparties?

16 A. I'm sorry, could you clarify
17 your question?

18 Q. Yeah, sorry, maybe I should
19 just ask you to qualify your answer
20 instead. But I am just trying to
21 understand, when you refer to the
22 portfolio, can you give me a little bit
23 more detail as to what that refers to?

24 A. Yes. It would be synonymous
25 with the fund.

1 D. MONTICCIOLO

2 Q. I see.

3 A. (Inaudible.)

4 Q. Yes, go ahead. More clarity
5 would be helpful for me to formulate the
6 right -- use the right terminology when
7 going forward.

8 A. So a fund is a portfolio of
9 assets, right?

10 Q. Right.

11 A. So they are synonymous.

12 Q. Got it.

13 A. So it's a portfolio of assets.
14 The investments, how's that?

15 Q. Yes. Understood.

16 So short duration -- let me
17 just try to tease this out a little bit
18 more.

19 So short duration fund, one of
20 the assets that short duration fund would
21 have or one of the investments that short
22 duration fund would have would be -- would
23 it be a note from or the equivalent
24 documentation from an entity that borrowed
25 money from the fund for a particular

1 D. MONTICCIOLO

2 purpose; is that one of the assets, for
3 example, that the short duration fund would
4 have?

5 A. Yes.

6 Q. Okay. And so there are various
7 assets that the fund would have at any
8 given moment in time and the portfolio
9 would be a way of describing all of those
10 assets together, all of those notes
11 together, for example?

12 A. Yes.

13 Q. Okay. So when we talk about
14 the portfolio liquidity duration target,
15 are we talking about the fund divesting of
16 or liquidating all of those assets within
17 18 months of their respective originations?

18 A. No.

19 Q. Okay, can you take the piece of
20 information that I did get right and link
21 it up to the 18-month portfolio liquidity
22 duration target for me?

23 A. Yes, so liquidity duration is
24 the liquidity of the underlying collateral,
25 the time of which money comes back on an

1 D. MONTICCIOLO

2 asset. And it doesn't necessarily mean
3 that the asset itself has finished or the
4 relationship has finished, it just means
5 that the cash went out and the cash came
6 back; whereas, we may have a much longer
7 relationship in various forms.

8 Q. Okay. That's helpful.

9 So once the cash goes out and
10 comes back, which I take it has to happen
11 within 12 months based on the liquidity
12 duration target, can you describe for me
13 what the continuing up to six-month
14 relationship might involve?

15 A. That's not correct, it's not up
16 to six months. We -- the --

17 We put cash out into a
18 particular transaction with a particular
19 borrower, it may come back in a day or it
20 may come back in 12 months or more.

21 Again, duration is not
22 maturity. And the relationship might be to
23 do that with a third party that brings us
24 many other borrowers that are individual
25 transactions.

1 D. MONTICCILO

2 Q. The relationship describes the
3 overarching deal between Brevet and a third
4 party and there may be a whole bunch of
5 other transactions that are occurring
6 underneath the rubric of that relationship;
7 is that right?

8 A. That is close enough, yes.

9 Q. Okay. What qualifies as a sort
10 of relationship; is it just that there is
11 one counterparty or one third party that is
12 serving as your counterparty in order for
13 that to be described as a relationship?

14 A. It is usually not describing a
15 counterparty. It's describing an agreement
16 or relationship.

17 Q. Okay. Is it fair to say one
18 agreement per relationship or is that also
19 not a fair description?

20 A. For these purposes, that can
21 work.

22 Q. Okay. I think I understand
23 what you are explaining to me.

24 And then are there additional
25 agreements that are executed in connection

1 D. MONTICCIOLO

2 with the transactions that occur within the
3 rubric of the relationship you just
4 described?

5 A. Yes, typically.

6 Q. Okay. And they are united by
7 the fact that it is one overall
8 relationship with one type of financing
9 that is involved?

10 A. That's vague, but mostly
11 correct.

12 Q. Okay, can you tell me -- and I
13 appreciate that I may not be using the same
14 terminology that I would use if I had the
15 same level of experience in the business
16 that you are in, but if you can identify
17 for me anything that you think needs to be
18 clarified about that to make sure that it
19 is completely accurate, that would be
20 helpful.

21 A. So it's through the
22 relationship that transactions that have
23 independent and distinct counterparties
24 and, in many cases, loans or financings
25 that are coming through or because of that

1 D. MONTICCIOLO

2 relationship.

3 Did that clarify?

4 Q. I think so. Thanks.

5 MR. CYRULNIK: Okay, I think we
6 have been going for about an hour and
7 a half and I know that in addition to
8 you and Mr. Solomon, there is also a
9 court reporter, so why don't we go
10 off the record for a few minutes.

11 THE WITNESS: You are a mind
12 reader.

13 THE VIDEOGRAPHER: The time is
14 10:05 and we are going off the
15 record. This is the end of media
16 unit No. 1.

17 (Whereupon, a brief recess was
18 taken.)

19 THE VIDEOGRAPHER: The time is
20 10:15 and we are back on the record.
21 This is the beginning of media unit
22 No. 2.

23 CONTINUED EXAMINATION

24 BY MR. CYRULNIK:

25 Q. Welcome back, Mr. Monticciolo.

1 D. MONTICCIOLO

2 Brevet Holdings, Brevet Capital
3 Management and the short duration entities,
4 Short Duration Partners, LLC and the Short
5 Duration Holdings, LLC, would you describe
6 those all as operating as a single
7 enterprise under common control?

8 A. I, I don't know how to answer
9 that question. I, I wouldn't.

10 Q. You would not. Well, let's
11 break it down.

12 Would you describe them as
13 operating under a common control?

14 A. Could you repeat your original
15 question, to make sure I understand it?

16 Q. Sure, I am breaking down the
17 original question, just to make it easier,
18 given your response.

19 A. Sure.

20 Q. The new question is would
21 you -- starting with the basic building
22 blocks here, would you describe Brevet
23 Holdings, Brevet Capital Management, Brevet
24 Short Duration Partners, LLC and Brevet
25 Short Duration Holdings, LLC as operating

1 D. MONTICCIOLO

2 under common control?

3 A. Can you explain what common
4 control would mean?

5 Q. Sure, what does that term mean
6 to you?

7 A. I don't have a clear single
8 view of what that means.

9 Q. You have never heard the term
10 common control?

11 A. I have heard the term common
12 control.

13 Q. And what --

14 A. It's in many different
15 contexts.

16 Q. Okay, what contexts have you
17 heard common control used in?

18 A. I don't recall.

19 Q. Well, have you ever used it in
20 the context -- have you heard it used or
21 used it yourself in the context of
22 describing various businesses?

23 A. Myself, I -- no, as I sit here,
24 I don't recall. I, I don't recall.

25 Q. Okay. Well, does it mean

1 D. MONTICCIOLO

2 anything to you in the context of
3 describing various businesses that are
4 separate entities but, nonetheless,
5 operating at the direction of some common
6 group of people?

7 A. I'm sorry, could you repeat the
8 question again?

9 MR. CYRULNIK: Can the court
10 reporter read back the question,
11 please.

12 A. Sorry.

13 (Whereupon, the referred to
14 question was read back by the
15 Reporter.)

16 A. I don't think it's a simple
17 description or simple answer.

18 Q. So is the answer no, you
19 wouldn't view the Brevet entities that I
20 just listed as operating under common
21 control?

22 A. Correct.

23 Q. And why not?

24 MR. SOLOMON: Object to the
25 question.

1 D. MONTICCIOLO

2 A. Because of what I answered
3 already, it's not a simple question.

4 Q. Well, you are not just
5 answering no to all questions that are not
6 simple, so I just want to understand why
7 you answered no as opposed to yes.

8 MR. SOLOMON: I object to the
9 question.

10 A. Because I don't think it's a
11 yes-no question.

12 Q. Okay, what factors do you think
13 you would want to know in order to be able
14 to decide whether to describe two or more
15 businesses as operating under common
16 control?

17 A. I would seek experts, lawyers,
18 others to help, you know, identify what
19 those conditions are based on the
20 situation.

21 Q. You would need to seek the help
22 of lawyers and experts to decide whether or
23 not you viewed businesses as operating
24 under common control; is that what you are
25 saying?

1 D. MONTICCIOLO

2 A. Yes.

3 Q. Mr. Monticciolo, is it fair to
4 say that no material decision happens at
5 Brevet without you having a say in the
6 decision?

7 MR. SOLOMON: I object to the
8 question; no foundation.

9 A. I would not agree with that.

10 Q. Okay. Do you think that the
11 buck stops at you when it comes to Brevet?

12 A. I would not agree with that.

13 Q. Okay, and why not?

14 A. Because it doesn't.

15 Q. Well, apart from yourself, who
16 else do you think is able to make
17 decisions, material decisions affecting
18 Brevet without getting your blessing?

19 A. We have a large organization
20 with professionals that are empowered to
21 make material decisions.

22 Q. And all of those professionals
23 ultimately answer to you, right?

24 A. No.

25 Q. Which professionals at Brevet

1 D. MONTICCIOLO

2 don't ultimately answer to Doug
3 Monticciolo?

4 A. Again, as I sit here, I can't
5 answer specifically; it's a large
6 organization.

7 Q. Can you identify one?

8 A. Yes.

9 Q. Please go ahead.

10 A. By name?

11 Q. I'm sorry?

12 A. By name?

13 Q. Yes.

14 A. Manuel.

15 Q. Does Manuel have a last name?

16 A. I'm sure, yes.

17 Q. You don't know Manuel's last
18 name?

19 A. As I sit here.

20 Q. As you as you sit here, you
21 don't?

22 A. No.

23 Q. Okay, do you know Manuel's
24 position?

25 A. He is a senior person in our

1 D. MONTICCIOLO

2 risk management group.

3 Q. Okay, and why is it that you
4 believe Manuel, senior position in your
5 risk management group, does not ultimately
6 answer to you?

7 A. Because he doesn't.

8 Q. Well, what entity does he work
9 for?

10 A. I, as I sit here, I don't know
11 specifically.

12 Q. You don't even know what entity
13 he works for?

14 A. Correct.

15 Q. Okay. Do you know that it's an
16 entity where you have no title?

17 A. I'm sorry, repeat the question,
18 I have no?

19 Q. Notwithstanding the fact that
20 you don't know the entity that employs
21 Manuel, do you know that the entity that
22 employs him is an entity in which you hold
23 no position?

24 A. I don't know.

25 Q. Then how is it that you are

1 D. MONTICCIOLO

2 able to testify today that Manuel doesn't
3 ultimately answer to you?

4 A. Because he reports to Mark.

5 Q. Okay, does Mark report to you?

6 A. No.

7 Q. In your view, Mr. Callahan
8 doesn't report to you in any way?

9 A. I didn't say in any way.

10 Q. Well, what did you mean when
11 you said no to my previous question does
12 Mark Callahan report to you?

13 A. Mark Callahan does not report
14 to me as an employee in the sign of report.

15 Q. And I appreciate that he may
16 not be reporting to you as an employee, I
17 am asking much more generally, is it your
18 view that Mark Callahan is able to make
19 decisions that affect the business of
20 Brevet without consulting you or against
21 your wishes?

22 MR. SOLOMON: Object to the
23 form.

24 A. As I sit here, I would say yes.

25 Q. So you don't think you have

1 D. MONTICCIOLO

2 ultimate authority over Mark Callahan?

3 A. We have policies and procedures
4 that legislate how things work.

5 Q. I appreciate that; if you can
6 answer my question, though.

7 A. If it's within those policies
8 and procedures, yes.

9 Q. If you wanted to get rid of
10 Mark Callahan, do you have the ability to
11 do that?

12 A. I don't know.

13 Q. You don't know whether you can
14 terminate Mr. Callahan in his various
15 positions at Brevet?

16 A. I didn't say that.

17 Q. Okay. Do you know whether you
18 can terminate Mr. Callahan's various
19 positions at Brevet?

20 A. I would have to consult our
21 compliance and HR people.

22 Q. Well, then back to my last
23 question, you don't know, sitting here
24 today, whether you can terminate
25 Mr. Callahan's various positions at Brevet?

1 D. MONTICCIOLO

2 A. Again, I answered that
3 question.

4 Q. I thought you did answer it,
5 but then you gave me an answer to the next
6 question which, at least, I understand to
7 be in conflict to that, which is why I am
8 returning to it. So if there is a
9 misperception there, my apologies in
10 advance, but if you could answer the
11 question again, that would be helpful.

12 A. So what is the question again?

13 Q. Sitting here today, is it your
14 view that you are able to effectuate a
15 termination of Mr. Callahan from the
16 various Brevet entities if you wanted to?

17 A. I don't know.

18 Q. To put it colloquially,
19 Mr. Monticciolo, you are the boss, right?

20 A. I wouldn't -- this is -- I
21 wouldn't call it that. I am the CEO.

22 Q. Well, I know you are the CEO.
23 You don't think that you are in
24 charge and ultimately accountable for
25 everything that happens at the Brevet

1 D. MONTICCIOLO

2 entities?

3 MR. SOLOMON: Asked and
4 answered.

5 A. I said no.

6 Q. If somebody at Brevet violates
7 a criminal statute, say, related to hacking
8 into a computer, is it your view that as
9 the CEO, you are not ultimately responsible
10 for that act of misconduct?

11 MR. SOLOMON: I object to the
12 question.

13 A. I don't know how to answer that
14 question.

15 Q. Well, yes or no would be fine,
16 or I don't know. Those are the --

17 A. I don't know.

18 Q. -- three answers.

19 You don't know.

20 Do you accept responsibilities
21 for those who are acting at Brevet in their
22 various capacities?

23 A. Not on a broad basis, no.

24 Q. Interesting.

25 Does every fund have a separate

1 D. MONTICCIOLO

2 offshore fund?

3 A. I don't know.

4 Q. With respect to the short
5 duration piece of Brevet, are there any
6 funds other than the Short Duration Fund,
7 LP and the Short Duration Fund, Ltd.?

8 A. At Brevet?

9 Q. Correct.

10 A. Yes.

11 Q. What are the other funds in the
12 short duration side of Brevet?

13 A. I'm sorry, I thought you said
14 just at Brevet in general?

15 Q. Yeah, my question was, and I
16 don't have the transcript in front of me,
17 but my question was within the short
18 duration side of Brevet, are there any
19 funds other than the onshore fund we talked
20 about earlier, which was the Short Duration
21 Fund, LP, and the offshore fund that we
22 talked about earlier, which was the Short
23 Duration Fund, Ltd.?

24 A. To the best of my knowledge,
25 no.

1 D. MONTICCIOLO

2 Q. Okay. And your answer to my
3 last question was referring to the fact
4 that in addition to the short duration
5 onshore fund and the short duration
6 offshore fund, there are also intermediate
7 duration fund, onshore funds and -- there
8 is also an intermediate onshore fund and an
9 intermediate duration offshore fund,
10 correct?

11 A. Correct.

12 Q. Okay. And those are the four
13 funds at Brevet in toto?

14 A. Correct.

15 Q. Okay. When was the Short
16 Duration Fund, Ltd., the offshore short
17 duration fund, first created, to your
18 knowledge?

19 A. I don't know.

20 Q. Do you know if it was before or
21 after 2016?

22 A. I don't recall.

23 Q. Do you recall whether it was
24 before or after 2013?

25 A. As I said, I don't recall.

1 D. MONTICCIOLO

2 Q. So you don't know whether it
3 predated 2013?

4 A. I do not.

5 Q. Were you involved in the
6 creation of the short duration fund
7 offshore?

8 A. Yes.

9 Q. And can you tell me was it your
10 idea to create an offshore fund?

11 A. I don't know if it was my idea.

12 Q. You just don't remember?

13 A. I don't know if it was my idea.

14 Q. You don't remember whether it
15 was your idea?

16 A. I don't remember.

17 Q. The offshore fund was created
18 after the onshore fund had been in
19 existence, correct?

20 A. I don't recall.

21 Q. So sitting here today, in your
22 mind, it's possible that the onshore fund
23 and the offshore fund were created at the
24 exact same time?

25 A. Again, I don't recall.

1 D. MONTICCIOLO

2 Q. So yes, sitting here today,
3 it's possible, in your mind, that the two
4 funds were created at the same time?

5 A. I just don't recall.

6 Q. Do you remember why it is that
7 you created an offshore fund?

8 A. For offshore investors.

9 Q. What does that mean?

10 A. For offshore investors.

11 Q. Does that mean that Brevet
12 Direct Lending Short Duration Fund, LP, the
13 onshore fund, never took on investors that
14 lived outside of the United States?

15 A. I don't know the answer to
16 that.

17 Q. Well, then what do you mean
18 that the offshore fund was created for
19 offshore investors; were offshore investors
20 allowed to invest in Short Duration Fund,
21 LP?

22 A. I don't know. You have to...

23 Q. Who do I have to ask?

24 A. Compliance.

25 Q. So you don't know whether

1 D. MONTICCIOLO

2 offshore entities or individuals are
3 permitted to invest in Brevet Direct
4 Lending Short Duration Fund, LP?

5 A. Correct.

6 Q. So if to your knowledge you are
7 not aware of anything that precluded
8 entities or individuals located outside of
9 the United States from investing in the
10 onshore fund, why is --

11 A. I didn't said that.

12 Q. You didn't say that you said?

13 A. Correct.

14 Q. Well, then let me ask you the
15 question directly.

16 To your knowledge, is there
17 anything that precludes individuals or
18 entities that are not located in the United
19 States from investing in Brevet Direct
20 Lending Short Duration Fund, LP?

21 A. To my knowledge, there are many
22 reasons.

23 Q. To your knowledge, yes, there
24 are things that prevent entities or
25 individuals living outside the United

1 D. MONTICCIOLO

2 States from investing in the onshore
3 duration fund?

4 MR. SOLOMON: Object to the
5 form.

6 A. I didn't say prevent. There
7 could be prevent.

8 Q. Yeah, I am struggling a little
9 bit with this line. I am not trying to,
10 you know, get you to say anything in
11 particular, I am just trying to understand
12 your answer.

13 To put it as squarely as I can,
14 I am trying to understand, Mr. Monticciolo,
15 to your mind, in your mind, sitting here
16 today, were individuals or entities located
17 outside of United States permitted to
18 invest in the onshore short duration fund,
19 yes or no?

20 A. I don't know. No, I don't know
21 if they are permitted.

22 Q. Okay. Now, moving on from
23 permitted to what actually happened, to
24 your knowledge, can you tell me one way or
25 the other whether or not individuals or

1 D. MONTICCIOLO

2 entities located outside of the United
3 States did in fact at any point in time
4 invest in the onshore duration fund, short
5 duration fund?

6 A. I am not aware of offshore
7 investors investing in the onshore funds.

8 Q. Okay. So you are not aware of
9 any offshore investors that have ever
10 invested in the short duration fund onshore
11 and you are not sure whether there was
12 anything that prohibited them from
13 investing in that fund; is that a fair
14 summary of your last two answers?

15 A. I said I don't believe I know
16 if offshore investors did in invest, I
17 don't believe they did, and I don't know if
18 they are prevented from investing in the
19 onshore.

20 Q. Does Brevet have any policies
21 or procedures in place to vet investors in
22 the onshore short duration fund to ensure
23 that those investors are not located
24 outside of the United States?

25 A. I don't know if that -- if it's

1 D. MONTICCIOLO

2 that specific.

3 Q. You don't know whether you have
4 any policies or procedures in place to vet
5 investors who are seeking to invest in the
6 onshore short duration fund to ensure that
7 they are not located outside of the United
8 States; is that right?

9 A. What I am saying, I am not the
10 person who is responsible for that, there
11 are independent parties and internal people
12 in policies.

13 Q. And I appreciate that. I
14 assume the internal people you are talking
15 about are, again, the compliance
16 department?

17 A. At least.

18 Q. Okay. Separate and apart from
19 who you might direct me to to get
20 additional information, I am just asking
21 you about your understanding as the CEO,
22 CIO, whatever other roles that you play at
23 Brevet, sitting here today at your
24 deposition, under oath, can you tell me
25 whether or not you are aware of any

1 D. MONTICCIOLO

2 policies and procedures that are in place
3 at Brevet to ensure that investors
4 investing in the onshore short duration
5 fund are all located within the United
6 States?

7 A. I am sure that I have hired the
8 right professionals to ensure the proper
9 screening, or whatever you want to call it,
10 is complete.

11 Q. Yes, that doesn't answer the
12 question. I really, I just want to know
13 the answer to my question, which is,
14 sitting here today, do you --
15 Mr. Monticciolo, can you, Mr. Monticciolo,
16 identify for me any policy or procedure
17 that is in fact in place at Brevet to
18 ensure that investors who are investing in
19 the onshore short duration fund are all
20 located within the United States, yes or
21 no?

22 A. No.

23 Q. Okay. So going back to the
24 creation of the offshore fund, am I correct
25 in recalling that you testified that the

1 D. MONTICCIOLO

2 reason for creating the offshore fund was
3 to facilitate or allow offshore investors
4 to invest in Brevet?

5 A. Yes.

6 Q. Okay. Do you recall there
7 being a problem whereby offshore investors
8 were not able to invest in Brevet prior to
9 the creation of the Short Duration Fund,
10 Ltd.?

11 A. Yes.

12 Q. Okay. Was there a specific
13 incident or a specific investor or a
14 specific event that you can recall that
15 prompted you or others to say we should
16 create an offshore fund to allow offshore
17 investors to invest in our company?

18 A. Yes.

19 Q. Can you describe for me the
20 event or events that you recall prompting
21 that decision or that discussion?

22 A. The one that comes to mind is
23 taxes.

24 Q. Did you say Texas?

25 A. Taxes.

1 D. MONTICCIOLO

2 MR. SOLOMON: Taxes.

3 Q. Oh, taxes. They are similar.

4 Okay, if you can describe for
5 me the events that you have in mind?

6 A. It's tax efficient.

7 Q. Sorry?

8 A. An offshore fund is tax
9 efficient.

10 Q. Did you say tax efficient?

11 A. Correct.

12 Q. Okay. Yeah, I am just asking,
13 if I understood your answer to my last
14 question, you do recall there being a
15 particular event that took place that
16 prompted the creation or, at least, the
17 discussion of the creation of the offshore
18 fund, right?

19 A. No. I would say it's a topic,
20 not a specific event.

21 Q. Okay. Did somebody tell you, I
22 am just trying to -- I am not trying to put
23 words in your mouth, I am just trying to
24 move this line of questioning along, did
25 somebody tell you, in sum or in substance,

1 D. MONTICCIOLO

2 that, you know, without having an offshore
3 fund, there are tax inefficiencies that
4 offshore investors are encountering or
5 would encounter if they want to invest in
6 Brevet?

7 A. Yes, it's common knowledge.

8 Q. Okay. So you understood at
9 some point in time that if an offshore
10 investor wanted to invest in Brevet, that
11 it would be tax, at a minimum, tax
12 inefficient for that investor if you didn't
13 create an offshore fund, right?

14 A. Amongst other things, yes.

15 Q. What are the other things that
16 you have in mind?

17 A. I don't know. That's why we
18 have professionals.

19 Q. Okay, but the tax
20 inefficiencies, you are saying that you did
21 know, that you were aware of?

22 A. Yes.

23 Q. And were you aware of that from
24 prior work that you had done at other
25 companies?

1 D. MONTICCIOLO

2 A. I don't know the source of that
3 knowledge.

4 Q. Okay. Did you have offshore
5 investors that were looking to invest in
6 Brevet that had flagged for you that there
7 would be tax inefficiencies with their
8 doing so if you didn't create an offshore
9 fund?

10 A. I don't recall.

11 Q. You don't recall whether any
12 offshore investors had approached you about
13 investing but flagged for you that they had
14 concerns about the tax implications of
15 doing so unless an offshore fund was
16 created?

17 A. Are you referring specifically
18 to 2000-something at Brevet or just that's
19 common knowledge?

20 Q. Yes, that is a fair
21 clarification.

22 I am not referring to a
23 particular year, I am only referring to the
24 period preceding the creation of the
25 offshore fund, which I think you testified

1 D. MONTICCIOLO

2 you didn't recall when that was, but
3 without, you know, honing in on a
4 particular year by name or by number, in
5 the lead up to the creation of the offshore
6 fund, do you recall any investors, offshore
7 investors approaching you about their
8 desire to invest in Brevet but their
9 concerns about doing so unless Brevet
10 created an offshore fund?

11 A. I don't recall if it came from
12 investors.

13 Q. Okay. Apart from the
14 distinction between the investors in the LP
15 and the Ltd., the onshore fund and the
16 offshore fund, is there a distinction in
17 the types of assets that the two funds own?

18 A. There can be.

19 Q. Well, I am just asking if there
20 is, in other words, particular types of
21 investments that are done only within the
22 onshore fund and particular types of
23 investments that are done only within the
24 offshore fund.

25 A. They have the same investment

1 D. MONTICCIOLO

2 pieces but the offshore has a separate
3 board.

4 Q. Okay. So I am happy to talk to
5 you about the -- and that is a helpful
6 clarification, I appreciate it. I am happy
7 to talk to you about the personnel piece in
8 a minute, but just focusing on the
9 investment thesis and the types of
10 investments, the two funds invest in the
11 same types of assets, in the same types of
12 opportunities; is that fair?

13 MR. SOLOMON: Objection.

14 A. Could you repeat the question?

15 Q. Sure. Setting aside the
16 personnel question, which we will get to
17 shortly, my question is the two funds, the
18 onshore short duration fund and the
19 offshore short duration fund, invest in the
20 same types of investments and the same
21 types of opportunities, correct?

22 A. They can.

23 Q. Okay. Is it fair to say
24 that --

25 MR. CYRULNIK: Withdrawn. Let

1 D. MONTICCIOLO

2 me rephrase.

3 Q. Is it fair to say that with
4 respect to a given investment opportunity,
5 say a given financing deal, you would often
6 have the choice of doing that financing,
7 engaging in that transaction, through
8 either the Short Duration Fund, LP or the
9 Short Duration Fund, Ltd.?

10 A. No.

11 Q. So what is it about a
12 particular opportunity that would earmark
13 the opportunity for only one of the funds
14 that Brevet owned?

15 A. There are -- it's not because
16 of that.

17 Q. Sorry, can you explain your
18 answer, and maybe just using different
19 words, because I didn't understand it?

20 A. It's not because of a criteria.

21 Q. Going back to my prior
22 question, the short duration fund --

23 MR. CYRULNIK: Withdrawn.

24 Q. With respect to a particular
25 financing transaction, would you agree with

1 D. MONTICCIOLO

2 me that such a transaction can often be
3 entered into or such a financing can often
4 be extended by either the LP or the Ltd.,
5 that is that you have a choice between
6 those two entities to serve as a
7 counterparty in a transaction in which
8 Brevet is engaging?

9 A. No.

10 Q. Why not?

11 A. [REDACTED]

[REDACTED]

13 Q. [REDACTED]

[REDACTED]

[REDACTED]

16 Q. And by originates, that is the
17 same term as sources?

18 A. No.

19 Q. Originates and sources are two
20 different concepts?

21 A. Yes.

22 Q. Can you help me understand what
23 origination means versus sources?

24 A. Sourcing is sources and
25 originates is funds owned.

1 D. MONTICCIOLO

2 Q. Funds owned. Okay, so I will
3 get back to sourcing then later, but let me
4 just focus on originating.

5 So is originating a formal term
6 for extending the financing, like where the
7 funds are coming from?

8 A. The first funds for the asset.

9 Q. The first funds for the asset
10 is what you said?

11 A. Correct.

12 Q. What do you mean by the first
13 funds for the asset?

14 A. The initial funding.

15 Q. So each asset could have
16 multiple tranches of funding; is that a --
17 is that what you mean to capture when you
18 talk about the first funding?

19 And I don't want to use -- if
20 tranche is a loaded term, feel free to
21 correct me and tell me what term you would
22 use, but I am just trying to understand
23 your testimony.

24 A. No, that is not what I mean.

25 Q. Okay. Can you help me

1 D. MONTICCIOLO

2 understand what you mean by [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]?

4 A. The first funding, initial
5 funding. I think I answered that.

6 Q. Yeah, I guess I am struggling
7 with initial funding and not be -- probably
8 not for any fault of yours, just because I
9 am trying to understand.

10 So we are talking about a
11 transaction, I guess initial --

12 MR. CYRULNIK: Withdrawn.

13 Q. Initial to me implies that
14 there are subsequent financings and so I am
15 trying to understand what you are referring
16 to when you refer to initial funding.

17 Am I correct in understanding
18 that initial funding is referring to a
19 situation where there are going to be
20 subsequent fundings?

21 A. No.

22 Q. Okay. Then I am definitely
23 lost, so why don't you help me understand
24 what you mean by initial funding.

25 A. I think you need to know how

1 D. MONTICCIOLO

2 the business works.

3 Q. Okay. Got it. That is a
4 probably a better question, so go right
5 ahead, can you explain to me a little
6 bit -- what I need to know how the business
7 works in order to understand what you [REDACTED]

8 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
9 [REDACTED] [REDACTED]

10 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
11 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED].

12 Q. Right. Well, I thought you
13 were going to explain to me how the
14 business works so that I could understand
15 what that means.

16 A. You asked me on the onshore
17 fund and I believe I correctly answered.

18 Q. Yes, that may be the case, but
19 I am trying to understand your answer, so
20 can you explain to me how the business
21 works in a way that can help me understand
22 what you mean by initial funding in your
23 last answer?

24 A. [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 D. MONTICCIOLO

2 Q. Is there a second party to fund
3 the asset?

4 A. There could be.

5 Q. Okay. Can you describe to me
6 the circumstances whereby a second party
7 would be funding the asset?

8 A. Someone participates or
9 purchases an asset.

10 Q. The onshore fund extends
11 financing to a counterparty, right, that is
12 the situation we are talking about?

13 A. Correct.

14 Q. Okay. I am going to use some
15 raw numbers, just to facilitate the
16 discussion here.

17 So let's say a counterparty is
18 looking for \$10 million worth of financing,
19 the onshore fund -- does the onshore fund
20 take \$10 million from an account that it
21 controls, directly or indirectly, and
22 extend that money, transfer that money over
23 to the counterparty in a typical
24 transaction?

25 A. That's one of the ways, yes.

1 D. MONTICCIOLO

2 Q. Okay. And in exchange for
3 doing so, the counterparty would obviously
4 be entering into various agreements that
5 include providing sufficient collateral for
6 the onshore fund to be extending that
7 initial transfer, correct?

8 A. Yes, amongst many things, yes.

9 Q. Okay. So now the counterparty
10 has the \$10 million in its account, the
11 onshore fund has whatever collateral and
12 whatever interest it received in return, in
13 exchange for that transfer, is that
14 transfer what you would characterize as the
15 initial funding for the asset?

16 A. Yes.

17 Q. Okay. And in this example that
18 we are talking about -- which I acknowledge
19 that is a hypothetical that I am making up
20 together with you, with your help -- can
21 you tell me how there would be something
22 that postdates the initial financing that
23 would qualify as another financing?

24 A. Yes.

25 Q. Please go ahead.

1 D. MONTICCIOLO

2 A. Another funding or a sale of
3 participation of the asset.

4 Q. So the counterparty needs more
5 funds than the initial \$10 million; is that
6 what happens in this example?

7 A. That is an example.

8 Q. Okay. Does the initial funding
9 amount generally correlate to the
10 counterparty's expected capital needs at
11 the time of the transaction?

12 A. It's a general question.
13 Depending on the transaction.

14 Q. So sometimes it does, but
15 sometimes it's the case that the
16 counterparty needs \$20 million but the
17 agreement and the plan from the outset is
18 to extend \$10 million in an initial funding
19 and then for the subsequent gap between the
20 funding needs and the initial funding
21 amount to be filled by subsequent fundings?

22 A. That's a possibility. Most are
23 just one funding up front.

24 Q. Okay. When there is one
25 funding up front, does that then get --

1 D. MONTICCIOLO

2 MR. CYRULNIK: Withdrawn.

3 Q. I can ask you about that
4 afterward.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 A. I believe so.

10 Q. Okay. And then how -- would
11 the onshore fund ever extend post initial
12 funding fundings?

13 A. It could, yes.

14 Q. Okay. And sometimes the
15 offshore fund would be the entity that
16 extends the post initial funding funds?

17 A. As I sit here, I would say no.

18 Q. What about an entity that is
19 owned or controlled by the offshore fund,
20 would that be an entity that would extend
21 the post initial funding funding?

22 A. As I sit here, I would say no.

23 Q. Okay. Does the offshore fund
24 ever extend post initial funding fundings?

25 A. Again, as I sit here, I don't

1 D. MONTICCIOLO

2 believe so.

3 Q. Does the offshore fund control
4 any entities that ever extend post initial
5 funding fundings?

6 A. Same answer.

7 Q. Okay. So what does the
8 offshore fund do vis-a-vis third parties or
9 financings?

10 A. It invests in assets consistent
11 with the investment strategy of the short
12 duration fund.

13 Q. And it invests in assets that
14 are owned by who prior to the offshore
15 funds' investment?

16 A. A variety -- it could be a
17 variety of parties.

18 Q. Would those parties include the

19 [REDACTED] [REDACTED]

20 A. [REDACTED]

21 Q. What other parties might own
22 assets in which the offshore fund invests?

23 A. Other parties that create
24 assets.

25 Q. Other Brevet-owned parties that

1 D. MONTICCIOLO

2 create assets?

3 A. Not necessarily.

4 Q. The offshore fund -- well,
5 let's start with the Brevet-owned parties,
6 does the offshore fund typically invest in
7 assets that are owned prior to the
8 investment by Brevet-owned or -controlled
9 entities?

10 A. Yes.

11 Q. And in addition to investing in
12 assets that are owned or controlled by
13 Brevet entities, the offshore fund also
14 invests in assets that are not -- that are
15 neither owned nor controlled by Brevet
16 entities; is that right?

17 A. Yes.

18 Q. Okay. Roughly -- and if this
19 varies over time, feel free to tell me that
20 and give me your best answer over time, but
21 roughly what percentage of the investments
22 made by the offshore fund are investments
23 in assets that are initially owned by
24 Brevet-owned or -controlled entities?

25 A. I don't recall the percentages.

1 D. MONTICCIOLO

2 Q. I understand that you are not
3 going to have an exact number for me,
4 Mr. Monticciolo, can you give me your best
5 estimate?

6 MR. SOLOMON: He is not asking
7 you to guess. Don't guess, if you
8 have a reasonable answer, you can
9 give it to him.

10 A. I don't know.

11 Q. Greater or less than
12 75 percent?

13 A. I am not going to guess.

14 Q. Greater or less than
15 50 percent?

16 A. Same answer.

17 Q. So, sitting here today, you
18 don't know whether the Brevet Short
19 Duration Fund, Ltd. invests more than half
20 of its investment funds in assets that are
21 owned by non-Brevet entities?

22 A. As I sit here, without looking
23 at the information, I don't want to guess
24 what percentage.

25 Q. I appreciate that, but I am

1 D. MONTICCIOLO

2 entitled to an answer to my question, is it
3 fair for me to characterize your answer the
4 way that I just did, which is, sitting here
5 today, you don't know whether Brevet Short
6 Duration Fund, Ltd. invests more than
7 50 percent of its funds in assets that are
8 not owned by Brevet?

9 A. That's a vague question.

10 Q. What's vague about it?

11 A. Is it at a point in time?

12 Q. Well, let's start with as of a
13 month ago.

14 A. Can you repeat your question?

15 Q. Yes. My question was, sitting
16 here today, can you tell me whether or not
17 the offshore fund as of one month ago, in
18 September of 2021, invested more than
19 50 percent of its funds in assets that were
20 not owned by Brevet.

21 A. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

1

D. MONTICCIOLO

[REDACTED]

11 Q. Yes. And I appreciate those
12 qualifications and that is all I am asking
13 for. I recognize this is a deposition, you
14 don't have all of the documents in front of
15 you.

16 Let me ask you the same
17 question about 75 percent, can you tell me,
18 to the best of your knowledge, whether as
19 of a month ago, 75 percent or more of the
20 offshore fund's invested capital was in
21 assets that were owned by Brevet?

22 A. I would have the same answer.

23 Q. Okay. And what about
24 90 percent, I can repeat the whole question
25 or I can just ask you, would you have the

1 D. MONTICCIOLO

2 same answer if I asked you about 90 percent
3 as of a month ago?

4 A. I would have to look.

5 Q. Okay. So, sitting here today,
6 without looking, you wouldn't know whether
7 that number is above -- is 90 percent?

8 A. Yes.

9 Q. Okay. Do you know what
10 percentage over time of the Short Duration
11 Fund, Ltd.'s investments were in assets
12 that had been owned by Short Duration Fund,
13 LP?

14 A. I, I don't. I would be
15 guessing.

16 Q. Would you say a substantial
17 portion of the Ltd.'s investments were in
18 assets that were owned by the LP?

19 MR. SOLOMON: Object to the
20 form.

21 A. Can you repeat the question?

22 Q. Sure. Would you say that a
23 substantial portion of Short Duration
24 Fund's assets -- Short Duration Fund Ltd.'s
25 assets -- funds were invested in assets

1 D. MONTICCIOLO

2 that had been owned by the Short Duration
3 Fund, LP?

4 MR. SOLOMON: Objection to
5 form.

6 A. Without looking, I couldn't say
7 if it was substantial all the time.

8 Q. Okay. At times, it was
9 substantial, you just don't know whether it
10 was substantial for the entire period of
11 its existence?

12 A. Yes.

13 Q. Okay. Was there a gap of time
14 between when you created the offshore fund
15 and when you started using the offshore
16 fund?

17 A. I don't recall.

18 Q. Okay. Do you have an interest
19 in the offshore fund?

20 A. Can you clarify interest?

21 Q. Do you have a financial
22 interest in the offshore fund? Do you hold
23 any --

24 A. I am not a limited partner in
25 the offshore fund.

1 D. MONTICCIOLO

2 Q. Okay. Setting aside whether
3 you are a limited partner in the offshore
4 fund, do you hold a financial interest in
5 the offshore fund, directly or indirectly?

6 MR. SOLOMON: Object to the
7 question.

8 A. I don't know.

9 Q. Well, let me ask the question
10 differently, Mr. Monticciolo, how do you
11 make money off the offshore fund's success?

12 A. By Brevet increasing its
13 invested capital with investors.

14 Q. By Brevet increasing its
15 investing capital with investors, what does
16 that mean?

17 A. We are a fund manager, we make
18 money from investing assets, thus making
19 investments.

20 Q. Are you referring to fees that
21 you are paid, that the investment manager
22 is paid?

23 A. That is one way.

24 Q. Okay, so increasing the funds
25 that Short Duration Fund, Ltd. is investing

1 D. MONTICCIOLO

2 or taking on from investors increases
3 Brevet Capital Management's investment
4 management fees and, therefore, inures to
5 your benefit given the interest that you
6 hold in Brevet Capital Management; is that
7 a fair summary?

8 A. It can.

9 Q. It can or it does?

10 A. Well, inures would mean it's a
11 positive benefit.

12 Q. Well, do you get paid as an
13 investment manager based on the success of
14 the offshore fund?

15 A. Are you asking a 30(b)(6)
16 question or a personal question?

17 Q. Let's start with personal.

18 A. I don't get paid by any vehicle
19 or fund directly.

20 Q. Okay. And if you include the
21 entities in which you hold a director
22 indirect interest, including Brevet Capital
23 Management, as we had seen when we looked
24 at the organizational charts, returning to
25 my question, would you agree that you

1 D. MONTICCIOLO

2 benefit financially through your
3 participation interest in Brevet Capital
4 Management's profitability through the
5 success of the offshore fund, given the
6 investment fees that Brevet Capital
7 Management stands to gain?

8 MR. SOLOMON: Object to the
9 question.

10 A. Brevet Capital Management
11 benefits. I can't, sitting here today, say
12 I directly benefit.

13 Q. You --

14 A. I could.

15 Q. Okay. Anybody -- so Brevet
16 Capital Management benefits from Brevet
17 offshore fund's success, correct?

18 A. Say that one more time?

19 Q. Brevet Capital Management
20 benefits from Brevet offshore fund's
21 success, correct?

22 A. Benefits in the broad
23 definition, yes.

24 Q. What about in the sense that it
25 gets investment management fees from those

1 D. MONTICCIOLO

2 investments, correct?

3 A. Yes, that's part of the
4 benefit.

5 Q. Okay. And those benefits that
6 Brevet Capital Management then enjoys also
7 inure to the benefit of anyone who holds
8 direct or indirect interest in the Brevet
9 Capital Management; you would agree with me
10 on that, right?

11 A. It could.

12 Q. Is there a world in which it
13 could not?

14 A. A world in which Brevet Capital
15 Management doesn't give its moneys to the
16 people who -- solely to the people who own
17 it, yes.

18 Q. A world in which Brevet Capital
19 Management benefits, earns fees but those
20 fees do not inure to the benefit of Brevet
21 Capital Management's stakeholders?

22 A. Yes.

23 Q. Can you describe that world to
24 me?

25 A. An unprofitable company.

1 D. MONTICCIOLO

2 Q. Did you say a non-profitable
3 company?

4 A. An unprofitable company.

5 Q. So you are saying if Brevet
6 Capital Management earns fees but
7 ultimately Brevet Capital Management's
8 bottom line is that it is not
9 profitability, then your view would be that
10 the stakeholders in Brevet Capital
11 Management don't ultimately enjoy any
12 benefit from the funds that Brevet Capital
13 Management had earned from its investment
14 services; is that a fair summary of what
15 you are trying to say or what you said?

16 A. I am saying it's a possibility.

17 Q. Has that ever happened in your
18 experience with respect to the Brevet
19 Capital Management entity, that is, has it
20 ever -- is Brevet --

21 MR. CYRULNIK: Withdrawn.

22 Q. Is Brevet Capital Management a
23 profitable entity?

24 A. Over what time period, when?

25 Q. Let's say since inception, do

1 D. MONTICCIOLO

2 you recall there being a year in which
3 Brevet Capital Management was not
4 profitable?

5 A. Yes.

6 Q. And what about over the last
7 six years, has Brevet Capital Management
8 been a profitable entity over the last six
9 years?

10 A. I would have to look to answer
11 that.

12 Q. Sitting here today, can you
13 think of any year in which Brevet Capital
14 Management was not a profitable entity?

15 A. Not specifically.

16 Q. And I see that on this chart,
17 Brevet Short Duration Partners -- I still
18 have Exhibit 1 in front of me -- is listed
19 as the general partner of Brevet Direct
20 Lending Short Duration Fund, LP, do you see
21 that?

22 A. Yes.

23 Q. What is a general partner,
24 Mr. Monticciolo?

25 A. The managing member.

1 D. MONTICCIOLO

2 Q. As the managing member, does
3 Brevet Short Duration Partners make
4 decisions with respect to the various
5 investments that the onshore short duration
6 fund engages in?

7 A. No.

8 Q. Who makes those decisions?

9 A. It hires an investment manager.

10 Q. And in the case of the onshore
11 fund, the investment manager that it hires
12 is the Brevet Capital Management entity?

13 A. Yes.

14 Q. So what types of things does
15 the managing member, the general partner,
16 like Brevet Short Duration Partners, do if
17 it's not involved in the decision making
18 with respect to the investments?

19 A. It manages on behalf of
20 investors, to make sure that it is a
21 properly running fund vehicle.

22 Q. Let's say, for example, the
23 onshore short duration fund wanted to sell
24 an asset, who would be making that
25 decision?

1 D. MONTICCIOLO

2 A. The investment manager.

3 Q. Okay. Would the general
4 partner or the managing member play a role
5 in making that decision?

6 A. No.

7 Q. Switching to the offshore fund,
8 I don't see a line between Short Duration
9 Partners, LLC and the offshore fund, is
10 there a general partner in the offshore
11 fund?

12 A. Yeah, I don't know -- this is
13 not our structure, I don't know where this
14 chart came from. This is not what we do.

15 Q. Well, this chart came from, as
16 I said, it came from your company, Brevet.
17 But is there anything about --

18 Can you describe to me how your
19 structure differs from the page that we are
20 looking at here with respect to the middle
21 to the left side of the page, that is
22 excluding the intermediate duration fund?

23 A. It's, it's substantially
24 different. Again, you would have to -- I
25 couldn't give specifics without counsel and

1 D. MONTICCIOLO

2 internal folks, but we don't do master
3 funds and it's not structured this way.

4 Q. Well, do you recall there being
5 a time where it was structured this way?

6 A. No.

7 Q. Do you recall there being a
8 time where there was a proposal to
9 structure the funds this way?

10 A. Not that I recall.

11 Q. So you have no idea why Brevet
12 would be in possession of an organizational
13 chart that depicts the short duration fund
14 in the way that's described in Exhibit 1,
15 page four?

16 A. I have no idea why this would
17 exist.

18 Q. Okay. If you take out the
19 master fund, are the other aspects of this
20 exhibit, the left-hand side of the page to
21 the middle, are the other aspects accurate,
22 that is, starting from the top down, Brevet
23 Short Duration Holdings is the managing
24 member of Brevet Short Duration Partners,
25 is that an accurate depiction of the

1 D. MONTICCIOLO

2 relationship as it exists, to your
3 knowledge?

4 MR. SOLOMON: So why don't we
5 have him answer just the last of the
6 questions that you asked on that,
7 okay.

8 MR. CYRULNIK: Sorry, I didn't
9 follow that, Lou, what was that?

10 MR. SOLOMON: Well, the first
11 part you have said everything is
12 accurate and then you gave him
13 specifics, so I was just suggesting
14 that he answer the specific question
15 that you asked; otherwise, I object
16 to the form of the question.

17 MR. CYRULNIK: Oh, yeah, sure.
18 No, I was transitioning to explain to
19 him what we are going to be doing and
20 I asked him a very specific question.

21 I am going through the various
22 pieces because I think the witness
23 identified the master fund as being
24 inconsistent with the way that the
25 fund is currently structured and so I

1 D. MONTICCIOLO

2 figured I would just confirm what
3 else about this is inaccurate and
4 what about this would be accurate.

5 Q. So I am starting with the top
6 of the page, Mr. Monticciolo, Brevet Short
7 Duration Holdings is identified as the
8 managing member of Brevet Short Duration
9 Partners, is that an accurate depiction,
10 to your knowledge, of the structure that
11 exists?

12 A. As I sit here, I believe that's
13 correct.

14 Q. Okay. I see Brevet Short
15 Duration Partners identified as the general
16 partner of Brevet Direct Lending the
17 onshore fund, is that an accurate depiction
18 of the way things are currently structured?

19 A. As I sit here, I believe that's
20 correct.

21 Q. Okay. I see Brevet Capital
22 Management depicted as the investment
23 manager for the onshore fund, is that an
24 accurate depiction of the way things
25 currently stand, to your knowledge?

1 D. MONTICCIOLO

2 A. Same answer.

3 Q. Okay. Now, moving slightly to
4 the right, I am looking at the offshore
5 fund, let's start with the piece that I do
6 see, I see that Brevet Capital Management
7 is identified as the investment manager for
8 the offshore fund, is that an accurate
9 depiction of the way things currently
10 stand, to your knowledge?

11 A. As I sit here, I don't believe
12 that's how it's structured.

13 Q. So you don't believe that
14 Brevet Capital Management functions as an
15 investment manager for the offshore fund?

16 A. Correct.

17 Q. And that's because you believe
18 that the way the offshore fund receives its
19 investment management services is through
20 other entities that are advised by Brevet
21 Capital Management?

22 A. As I sit here, I believe that's
23 correct.

24 Q. Okay. And, sitting here today,
25 do you know the name of any or all of those

1 D. MONTICCIOLO

2 other vehicles or entities that are -- for
3 which Brevet Capital Management serves as
4 investment manager and then indirectly
5 passes those services along to the Short
6 Duration Fund, Ltd.?

7 A. I don't recall the names of
8 those entities.

9 Q. Do you know, roughly, how many
10 entities exist that are clients of Brevet
11 Capital Management that then ultimately
12 turn around and are affiliated with the
13 offshore fund?

14 A. I don't recall.

15 Q. More or less than five?

16 A. I would be guessing.

17 Q. You don't know if it's more or
18 less than five, okay.

19 Would you know if it's greater
20 or fewer than ten?

21 A. Again, I would be guessing. I
22 am not the one who structures those.

23 Q. Okay. Where would those
24 entities, those vehicles be listed on a
25 chart like this?

1 D. MONTICCILOLO

2 MR. CYRULNIK: I'm sorry, I am
3 hearing some interference. If
4 everyone -- whoever is not on mute
5 can go on mute.

6 Q. Sorry, Mr. Monticciolo, where
7 would those vehicles that you have in mind,
8 recognizing that you don't know the number
9 or the names of those vehicles, where would
10 those appear or where would you put those
11 on a chart like this, just to help me
12 understand their relationship to the
13 offshore fund?

14 A. Again, as I sit here, without
15 looking at the materials, below the
16 limited.

17 Q. Okay. So it's your
18 understanding that vehicles that are owned
19 or controlled by the Ltd. would be the
20 vehicles that get direct investment
21 management services from Brevet Capital
22 Management?

23 A. Again, as I sit here, I can't
24 tell you whether they are owned or
25 controlled. These are details that are for

1 D. MONTICCIOLO

2 the structure people.

3 Q. Okay. Does -- are there
4 similar vehicles -- well, sorry, if
5 those --

6 MR. CYRULNIK: Withdrawn.

7 Q. If those vehicles are not owned
8 or controlled by the Ltd., what would be
9 their relationship with the Ltd.?

10 A. Again, as I sit here, I can't
11 specifically answer that.

12 Q. Can you think of any other
13 relationship other than, you know, the Ltd.
14 owning or controlling those vehicles?

15 A. Yes.

16 Q. Okay, can you tell me what you
17 can think of?

18 A. A variety of financial
19 agreements.

20 Q. An example would be, I think,
21 helpful.

22 A. Swaps, participations, it could
23 be a direct ownership, I don't know.

24 Q. Okay. With respect to the
25 various relationships that you -- possible

1 D. MONTICCIOLO

2 relationships that you just identified and
3 that I identified between the offshore fund
4 and the vehicles that we were discussing,
5 let me just ask you, are there similar
6 vehicles on the left side of this chart,
7 that is are there similar vehicles that
8 have such relationships with the onshore
9 fund?

10 A. As I sit here, I'd say no.

11 Q. Do you know why it is the case
12 that the onshore fund doesn't have those
13 types of vehicles for their investments but
14 the offshore fund does?

15 A. I think I answered that before.
16 Because of the complexities
17 with offshore investors.

18 Q. I see. So it's your
19 understanding that the existence of that
20 additional layer of vehicles that have
21 relationships with the offshore fund is
22 related to the desire to have tax
23 efficiencies on the offshore fund's side of
24 this equation; is that a fair general
25 description of your understanding?

1 D. MONTICCIOLO

2 A. As I sit here, I would say at
3 least that.

4 Q. Got it. As a practical matter,
5 you would agree with me that Brevet Capital
6 Management as investment manager is
7 providing similar services directly to
8 Short Duration Fund, LP and indirectly to
9 Short Duration Fund, Ltd. by way of its
10 various vehicles --

11 MR. SOLOMON: Object to the
12 form.

13 Q. -- would you not?

14 A. It depends on the definition of
15 similar.

16 Q. Okay, can you tell me whether
17 you would characterize those as similar
18 services?

19 A. They have similar investment
20 strategies, I can't tell you if that means
21 similar services.

22 Q. Is there any other entity that
23 you would identify for me that I would need
24 to know about in terms of understanding the
25 organizational structure of the offshore

1 D. MONTICCIOLO

2 fund and the onshore fund other than the
3 ones that we have discussed in the last few
4 minutes?

5 A. The governance is quite a bit
6 different.

7 Q. Okay, can you help me
8 understand the governance of the offshore
9 fund versus the onshore fund?

10 A. As I sit here, not detailed,
11 but there is a separate independent board
12 that runs the offshore fund.

13 Q. As opposed to the GP that runs
14 the onshore fund?

15 A. Correct.

16 Q. And do you know who sits on the
17 board that runs the offshore fund?

18 A. No.

19 Q. Do you sit on that board?

20 A. I do not.

21 Q. Does Mr. Callahan sit on that
22 board?

23 A. As I sit here, I don't believe
24 so.

25 Q. Can you identify anybody who

1 D. MONTICCIOLO

2 sits on the board that runs the offshore
3 fund?

4 A. Not as I sit here.

5 Q. Who makes the decisions for the
6 offshore fund with respect to what assets
7 to invest in?

8 A. That board.

9 Q. Okay. And who makes the
10 decisions for the onshore fund with respect
11 to what assets to invest or to sell?

12 A. The investment committee.

13 Q. And [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED], correct?

15 A. Correct.

16 Q. Are there any people on the
17 investment committee for the onshore fund
18 who also play a role in the offshore fund's
19 governance?

20 A. As I sit here, I don't believe
21 so.

22 Q. Has that always been the case,
23 to your knowledge?

24 A. I don't recall.

25 Q. Why would the onshore fund sell

1 D. MONTICCIOLO

2 an asset or a piece of an asset --

3 MR. CYRULNIK: Well, withdrawn.

4 Q. Let me ask you, when the
5 onshore fund sells assets to, say, the
6 offshore fund, does it sell the entire
7 asset, does it sell, you know, an interest
8 in the asset or sometimes it does the
9 entire asset, sometimes it does a piece of
10 the asset?

11 A. It varies.

12 Q. Okay. Why would the onshore
13 fund sell an asset or a piece of an asset
14 to the offshore fund?

15 A. Because it looks for
16 diversification. Amongst many other
17 reasons.

18 Q. If an asset that the onshore
19 fund owns is profitable, how does that
20 ultimately inure to the benefit of Brevet
21 Short Duration Partners, LLC?

22 A. If an individual asset is
23 profitable, it could.

24 Q. And how --

25 A. With fees. As in through fees.

1 D. MONTICCIOLO

2 Q. If --

3 A. Or, actually, through
4 incentive.

5 Q. Could you describe to me how
6 that works, the incentive?

7 A. It's based on the performance
8 of the fund.

9 Q. So Brevet Short Duration
10 Partners' profitability is tied to the
11 performance of the onshore short duration
12 fund, right?

13 A. It could be.

14 Q. I appreciate that it could be,
15 I am asking you whether it is.

16 A. I believe it is partially.

17 Q. Okay. And the Brevet short
18 duration fund's, onshore short duration
19 fund's performance is tied to the
20 profitability of the various assets that
21 the onshore fund owns, correct?

22 A. Correct.

23 Q. So if you have an asset that is
24 particularly profitability, that is, say, a
25 financing deal that is particularly

1 D. MONTICCIOLO

2 profitability, and that financing deal,
3 that asset is owned by Short Duration Fund,
4 LP, then that profitability will ultimately
5 translate into incentives, I believe was
6 the term that you used, that would be
7 enjoyed by Short Duration Partners and its
8 members, correct?

9 A. No.

10 Q. Why is that incorrect?

11 A. Because you would have to look
12 at what the agreements are at the vehicles
13 of who gets paid what.

14 Q. At the vehicles, what are you
15 referring to by the vehicles?

16 A. Brevet Capital Management,
17 Short Duration Partners, et cetera.

18 Q. Well, yeah, to be clear, I
19 wasn't suggesting that all of the
20 profitability of a particular asset goes
21 right up the chain to Brevet Short Duration
22 Partners, LLC, so to the extent you
23 understood me to be asking that, then I
24 would make that clarification.

25 My question is you would agree

1 D. MONTICCIOLO

2 that if an asset that is owned by Short
3 Duration Fund, LP is profitability, is
4 generating profits, that that profitability
5 to some extent trickles up, if that's even
6 a term, to the Brevet Short Duration
7 Partners, LLC level and to its members;
8 would you agree with me on that?

9 A. Again, my answer is it could.

10 Q. Can you describe for me a
11 circumstance in which it could not or would
12 not?

13 A. There are a lot of complex
14 agreements that control where moneys --
15 where profits and payments go for services,
16 et cetera.

17 Q. Subject to that clarification,
18 can you give me any example of an instance
19 in which an asset owned by the onshore fund
20 was profitable but that profitability did
21 not in any way trickle up to the Brevet
22 Short Duration Partners level in any way?

23 A. Sure.

24 Q. Go right ahead.

25 A. All of the other assets lost

1 D. MONTICCIOLO

2 money, so there is no profits to be shared.

3 Q. Well, wouldn't it be fair to
4 say that the profitability of that asset
5 still has trickled up but it was offset by
6 losses that would have otherwise been
7 experienced as a result of other assets?

8 A. Again --

9 MR. SOLOMON: Could you --

10 I object to the use of trickled
11 up now that it means what you are --

12 MR. CYRULNIK: Too late, Lou.
13 The statute of limitations on that
14 objection has run.

15 MR. SOLOMON: It was of
16 rational use when you first said it.

17 MR. CYRULNIK: That is now a
18 term of art that you are going to
19 have to use in your questioning too.

20 THE WITNESS: The digital era
21 statute of limitations is measured by
22 seconds.

23 A. It could. It's -- there is a
24 million permutations.

25 Q. Apart from being canceled out

1 D. MONTICCIOLO

2 by losses that other assets experience and
3 then push up to the Partners level, would
4 you agree with me that profits experienced
5 as a result of a particular asset that is
6 owned by the onshore fund do make their way
7 up to the Partners level and then would
8 make their way up to the members of that
9 Partners, LLC level, as well, subject to
10 potential offsetting by way of -- you know,
11 as a result of losses experienced with
12 respect to other assets owned by that
13 entity?

14 MR. SOLOMON: Object to the
15 question.

16 A. And, again, my answer is it
17 could.

18 Q. I appreciate that, but I guess
19 I am struggling with -- I am not seeing an
20 example that you have provided, and I would
21 appreciate if you could help me see it if
22 you have one in mind, whereby profitability
23 at the asset level, that is an asset owned
24 by Short Duration Fund, LP, doesn't
25 ultimately make its way up in some way to

1 D. MONTICCIOLO

2 the Brevet Short Duration Partners, LLC
3 level, can you help me understand why that
4 would happen?

5 Again, I am not asking you to
6 account for the possible offsetting of
7 those profits or the portion of those
8 profits that have made their way up, I am
9 not asking you to account for the
10 offsetting of that by other assets, but I
11 am just asking you to focus, for the
12 purposes of the question, on the profitable
13 asset and confirm for me whether you mean
14 to tell me that there is a world in which
15 that profitability does not make its ways
16 up in some way to the Partners level?

17 A. Yes I am saying.

18 Q. Yes, can you give me an example
19 of when that would be the case?

20 A. There could be other
21 obligations or contracts that prevent
22 profit from being, you know, up -- did you
23 say trickle up?

24 Q. Upstream, how does upstream
25 sound?

1 D. MONTICCIOLO

2 A. Upstream is a word.

3 Q. Okay. There could be other
4 obligations that prevent those profits from
5 being upstreamed?

6 A. Correct.

7 Q. Where would those profits go if
8 they weren't upstreamed to the various --
9 to the partners of the short duration fund,
10 including its GP?

11 A. Amongst others, as I sit here,
12 I would probably say the investment
13 manager.

14 Q. I see, okay.

15 Let's say you have an asset
16 that does generate profits and make their
17 way -- which then make their way up to
18 Brevet Short Duration Partners, LLC, you
19 would agree with me, Mr. Monticciolo, that
20 the various members of Brevet Short
21 Duration Partners, LLC would then
22 themselves have a pro rata interest in the
23 profits that were generated in that
24 example, correct?

25 A. If there weren't other expenses

1 D. MONTICCIOLO

2 or costs, they could -- in your
3 hypothetical, there would be profits that
4 come up; it doesn't mean that it's
5 profitable.

6 Q. Okay. How about Brevet Short
7 Duration Holdings, LLC, I see it's the
8 managing member of Partners, so do -- how
9 does the profitability of Partners affect
10 the profitability of Holdings?

11 A. As I sit here, I recall there
12 is a profit in contract or interest between
13 the two.

14 Q. So the profits of Partners are
15 distributed amongst --

16 MR. CYRULNIK: Withdrawn.

17 Q. Were there -- apart from Brevet
18 Short Duration Holdings, who else had an
19 interest in Partners?

20 A. Say that one more time, sorry.

21 Q. Yeah, I can ask you a different
22 question.

23 MR. CYRULNIK: Withdrawn.

24 Q. I see Holdings is identified as
25 the managing member of Brevet Short

1 D. MONTICCIOLO

2 Duration Partners, do you see that?

3 A. Yes.

4 Q. And that's accurate, to your
5 knowledge?

6 A. To my knowledge.

7 Q. Are there non-managing members
8 of Partners, as well?

9 A. As I sit here, I couldn't tell
10 you.

11 MR. SOLOMON: I'm sorry, did
12 you say non-managing members of
13 Partners?

14 MR. CYRULNIK: Yes.

15 THE WITNESS: Oh.

16 MR. SOLOMON: That wasn't the
17 question that you asked, I object to
18 the question.

19 MR. CYRULNIK: I think that was
20 the question I asked.

21 THE WITNESS: Yes, sorry.

22 MR. SOLOMON: No, you asked if
23 Holdings was the managing member and
24 then you asked if there are
25 non-managing members of Partners.

1 D. MONTICCIOLO

2 MR. CYRULNIK: You got it.

3 That's the question I asked, exactly.

4 A. As I sit here, I don't recall.

5 Q. Do you have a membership
6 interest in Partners?

7 A. I believe I do.

8 Q. And you are not a managing
9 member, are you?

10 A. I don't know.

11 Q. Do you think there is more than
12 one managing member of Partners; that is,
13 do you think there is a managing member of
14 Partners other than Holdings?

15 A. As I sit here, I would have to
16 look at the documents, I -- the chart
17 doesn't say that.

18 Q. Okay, so can we describe you as
19 a non -- would you describe yourself as a
20 non-managing member of Partners?

21 A. I don't know how to describe
22 myself in that.

23 Q. Do you know what percentage
24 interest you hold in Partners?

25 A. I do not.

1 D. MONTICCIOLO

2 Q. Roughly?

3 A. As I sit here, I have to look
4 at documents.

5 Q. Do you know who else -- do you
6 know if anyone else holds an interest in
7 Partners?

8 A. As I sit here, I would have to
9 look at who else does.

10 Q. Do you know whether Mark
11 Callahan owns an interest in Partners?

12 A. As of today, I would have to
13 look at if he -- if he is.

14 Q. So you don't know, sitting here
15 today, one way or the other, whether
16 Mr. Callahan owns an interest in Partners?

17 A. Again, I would have to go look,
18 because things are always evolving.

19 My recollection is that there
20 were other members in there.

21 Q. That I understand, but you
22 don't have a recollection, one way or the
23 other, as to the last time you checked
24 whether Mark Callahan was one of them?

25 A. The last time my people have

1 D. MONTICCIOLO

2 checked and who do work for me would know,
3 it's not something I look at every day.

4 Q. How about John Tripp, do you
5 know whether he is a comember of yours at
6 Brevet Short Duration Partners?

7 A. I, again, as I sit here, I
8 don't know.

9 Q. How about Paul Iacovacci?

10 A. As I sit here, I don't know.

11 Q. Okay. With respect to the
12 profitability of Brevet Short Duration
13 Partners --

14 MR. CYRULNIK: Withdrawn. Let
15 me ask it a different way.

16 Q. Mr. Monticciolo, what happens
17 if you take a profitable asset from the
18 onshore fund and move it over, you sell a
19 piece or all of that asset to the offshore
20 fund, does that affect -- does that
21 transaction affect the identity of the
22 individual entities or people who could
23 participate in the profitability or benefit
24 from the profitability of that asset?

25 A. It could.

1 D. MONTICCIOLO

2 Q. And if you have an individual,
3 let's talk about a specific individual for
4 now, who has an interest in -- a direct or
5 indirect interest in the onshore fund but
6 does not hold an interest, directly or
7 indirectly, in the offshore fund, is it
8 your -- you would agree with me that
9 transferring an asset away from the onshore
10 fund and to the offshore fund could be
11 harming or being done to the detriment of
12 that individual; would you agree with me on
13 that?

14 MR. SOLOMON: I object to the
15 question.

16 A. Unlikely.

17 Q. Did you say un --

18 A. But possible.

19 Unlikely but possible.

20 Q. Okay.

21 A. It could be tremendously
22 beneficial to them.

23 Q. Okay, so let's talk about the
24 various pieces of that answer. So I think
25 you said possible, unlikely and then you

1 D. MONTICCIOLO

2 also added that it could be tremendously
3 beneficial.

4 Let's start with the unlikely
5 piece, could you explain the basis for your
6 understanding that taking a profitable
7 asset out of the onshore fund and moving it
8 to a different fund in which the individual
9 who has an interest in the onshore fund
10 does not have an interest in that other
11 entity, how that would -- how it's unlikely
12 that that transaction would not be to the
13 detriment of that individual?

14 A. Because you take that cash and
15 put it in a much more profitability asset.

16 Q. Say that again.

17 A. You would take the cash from
18 selling that asset and, as you know,
19 originate a much more profitable asset as a
20 possibility.

21 Q. I see. So the point is if
22 there was another asset that was more
23 profitable than the one that is being sold,
24 then in that scenario, the sale would not
25 be to the detriment of the individual that

1 D. MONTICCIOLO

2 we are talking about?

3 A. That is one possibility.

4 Q. In the same way,
5 Mr. Monticciolo, that my selling stock in,
6 say, General Motors, assuming that it's
7 been profitable for me over the course of
8 the last year, would not be to my detriment
9 if I then took those funds and put them in
10 stock of Apple, which say has, you know,
11 appreciated by a greater percentage or is
12 appreciating by a greater percentage than
13 General Motors' stock over the course of
14 the ensuing period; is that a fair general
15 analogy to capture the concept that you had
16 in mind?

17 A. If you only owned one asset,
18 that would be a concept but not applicable.

19 Q. Sorry, that is not a good
20 analogy, in your view?

21 A. Not at all.

22 Q. Then maybe you could help me
23 understand what you meant. Why would it be
24 unlikely that divesting of a profitable
25 asset would not be to the detriment of

1 D. MONTICCIOLO

2 those individuals who hold an interest in
3 the asset prior to the divestment?

4 MR. SOLOMON: I object to the
5 word divestment.

6 A. Again, it's basic investment
7 theory; diversification, reducing
8 concentration risk, improving risk
9 profiles.

10 Q. Anything else?

11 A. I'm sure the list goes on.

12 Q. The only way to ensure the list
13 goes on is if you keep on talking.

14 A. I think you would have to learn
15 about portfolio management to understand
16 that.

17 Q. Well, do you know about
18 portfolio management; isn't that one of
19 your areas of expertise?

20 A. Yes.

21 Q. So can you complete the list
22 for me, please?

23 A. The list is extensive and very
24 situation specific.

25 Q. Well, is there anything else

1 D. MONTICCIOLO

2 that you would add to the list that you
3 have already broken out for me?

4 A. I would, but not given the
5 specificity you have provided.

6 Q. What else would you need to
7 know?

8 A. Everything about all of the
9 other investments that you're in and your
10 history, your experience, the markets you
11 are in, everything.

12 Q. You would need to know
13 everything about all of the other
14 investments to tell me whether or not
15 taking an asset out -- a profitable asset
16 out of the onshore fund would ultimately
17 inure to the detriment of the members of an
18 entity that held an interest in the onshore
19 fund?

20 A. Absolutely. Because that is
21 most likely an improper characterization.

22 Q. What is most likely an improper
23 characterization?

24 A. What if it wasn't the most
25 profitable asset and the another more

1 D. MONTICCIOLO

2 profitable asset was available but you are
3 holding them back from investing in that
4 because you are holding that less
5 profitable asset?

6 Q. Okay. Is it your testimony
7 that the only time the short duration,
8 onshore short duration sells an asset to
9 the offshore fund or a piece of an asset to
10 the offshore fund, that that is a decision
11 that would be made by the investment
12 manager, Brevet Capital Management,
13 correct?

14 A. Yes.

15 Q. So is it your testimony that
16 the only times that the investment manager
17 for Short Duration Fund, LP sells an asset
18 or a piece of an asset to the offshore
19 fund, that is Short Duration Fund, Ltd., is
20 when doing so is beneficial to the
21 stakeholders in the onshore fund as a
22 result of one or more of the factors that
23 you just described for me?

24 A. No.

25 Q. You would agree that the

1 D. MONTICCIOLO

2 investment manager sometimes has Short
3 Duration Fund, LP sell assets or pieces of
4 assets that it owns to the offshore fund
5 even though that sale may not be for the
6 benefit of the stakeholders in Short
7 Duration Fund, LP?

8 A. No.

9 Q. No, you would not agree or no,
10 they wouldn't do that?

11 A. I would not agree with you.

12 Q. So, back to my last question, I
13 meant to give diametrically opposed
14 opposites so that the answer would have to
15 be yes to one of them, but maybe I misspoke
16 or you misunderstood.

17 Either way, when Brevet Capital
18 Management causes the onshore fund to sell
19 an asset or a piece of an asset to the
20 offshore fund, does it do so solely on the
21 basis -- let me rephrase that.

22 When Brevet Capital Management
23 causes the onshore fund to sell an asset or
24 a piece of an asset to the offshore fund,
25 does it do so only if it believes that

1 D. MONTICCIOLO

2 selling that asset is going to inure to the
3 benefit of the Short Duration Fund, LP's
4 stakeholders?

5 A. No, without clarification of
6 stakeholders.

7 Q. Those who hold a direct or
8 indirect membership interest in the fund,
9 including its general partner.

10 A. Then no.

11 Q. So sometimes Brevet Capital
12 Management, as investment manager, causes
13 the onshore fund to sell an asset or a
14 piece of an asset to the offshore fund
15 notwithstanding the fact that the sale of
16 that asset might not inure to the benefit
17 of Brevet onshore short duration fund's
18 general partner, Brevet Short Duration
19 Partners, for example; is that correct?

20 A. An investment manager manages
21 to the best interests of all of its
22 investors.

23 Q. If you could just answer my
24 question, I think it would be a little
25 easier. I appreciate that general rule of

1 D. MONTICCIOLO

2 thumb.

3 MR. SOLOMON: I think he did,
4 so maybe ask another question.

5 MR. CYRULNIK: Well, I
6 certainly wouldn't ask another
7 question; I can have that question
8 read back, but I assure you --

9 MR. SOLOMON: Go on, he
10 answered your question.

11 MR. CYRULNIK: We could debate
12 that, but I don't think it's going to
13 be unclear from the record.

14 Q. My question --

15 MR. CYRULNIK: Can you please
16 read back my question.

17 A. The answer is investment
18 manager, we -- it manages to the best
19 interests of all of the investors.
20 Stakeholders is your term.

21 Q. That I -- I appreciate that
22 general rule of thumb, my question is a yes
23 or no question, does Brevet Capital
24 Management as investment manager for
25 onshore funds ever effect the sale of an

1 D. MONTICCIOLO

2 asset that onshore fund owned even though
3 the sale of that asset would not inure to
4 the benefit of short duration fund's
5 general partner, Short Duration Partners?

6 A. It is not a rule of thumb. It
7 never puts the general partner above the
8 best interests of all of the investors.

9 Q. So the answer to my question is
10 yes, sometimes the investment manager will
11 cause the onshore fund to sell an asset to
12 the offshore fund even though the sale of
13 that asset is not in the interest of the
14 general partner?

15 A. Yes.

16 Q. Okay. Let's say somebody on
17 the investment management side, someone
18 who --

19 You would agree with me that
20 you play a role in the investment manager's
21 decisions, Brevet Capital Management,
22 right?

23 A. [REDACTED]
[REDACTED].

25 Q. Okay, so I am going to use you

1 D. MONTICCIOLO

2 just for simplicity's sake.

3 If you, Doug Monticciolo, hold
4 an interest in the offshore fund as well,
5 direct or indirectly, in the success of the
6 offshore fund, would you agree with me that
7 there would be circumstances under which --

8 Let me change the hypothetical.
9 So I am going to withdraw that initial lead
10 up.

11 I want you to assume for
12 purposes of my next couple of questions
13 that you own an interest in the offshore
14 fund that is greater than your interest in
15 the onshore fund. And by interest, I am
16 referring to the totality of benefits that
17 you, Doug Monticciolo, might realize from
18 the success of those two entities.

19 So you, for purposes of my next
20 few questions, you are going to assume that
21 you get more out of profit, out of a dollar
22 of profit that is earned at the offshore
23 fund than you would out of a dollar of
24 profit that is generated at the onshore
25 fund, okay?

1 D. MONTICCIOLO

2 A. Okay.

3 Q. Okay. Assuming that's the
4 case, would you agree with me that if we
5 focus on your own personal interests, [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] [REDACTED], you would be
8 incentivized to sell profitable performing
9 assets from the onshore fund to the
10 offshore fund?

11 MR. SOLOMON: Have you
12 completed your question?

13 MR. CYRULNIK: I did, I
14 completed my question.

15 MR. SOLOMON: I object to the
16 question and I object to the
17 hypothetical.

18 MR. CYRULNIK: Okay.

19 Q. Mr. Monticciolo.

20 A. It's a nonrealistic,
21 nonapplicable hypothetical, but if that
22 existed, yes.

23 Q. Okay. Let's say there was
24 somebody who held an interest in the
25 onshore short duration fund that you really

1 D. MONTICCIOLO

2 didn't like and that individual did not
3 hold an interest in the offshore fund,
4 would you agree with me that you would
5 similarly be incentivized, [REDACTED] [REDACTED]
6 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED], to sell profitable assets held
8 by the onshore fund to the offshore fund,
9 including because doing so would preclude
10 said individual from realizing any benefit
11 from the profitability of those assets?

12 MR. SOLOMON: I object to the
13 question and I object to the
14 hypothetical.

15 A. It's a hypothetical,
16 unrealistic and nonapplicable scenario, as
17 I previously had stated, and the answer
18 would be I guess yes, but it's a
19 hypothetical.

20 Q. Is it unrealistic because there
21 is nobody that fits the bill that you
22 really dislike and you don't want to
23 benefit from profitability?

24 A. Not at all.

25 Q. Okay. There is somebody like

1 D. MONTICCIOLO

2 that, right?

3 A. Not at all.

4 Q. Do you dislike Paul Iacovacci?

5 A. No, not at all.

6 Q. You like him?

7 A. He was a long-time friend.

8 Q. How about now, do you like him
9 now?

10 A. I haven't talked to him in a
11 long time.

12 Q. That would be responsive if I
13 asked you when the last time you spoke to
14 him is.

15 Do you like Mr. Iacovacci now?

16 A. I don't hold grudges.

17 Q. Is it your view that
18 Mr. Iacovacci's participation interest in
19 Brevet success or profitability, assuming
20 that he does hold interests in one or more
21 entities based on a finding that he had
22 left the company voluntary or not been
23 terminated, is it your view that the only
24 entities in which he would be able to
25 participate in their profitability would be

1 D. MONTICCIOLO

2 Short Duration Partners and Short Duration
3 Holdings?

4 A. As I sit here, I believe those
5 are the only entities that he is a part of.

6 Q. And so if you were trying to --

7 And you understand that

8 Mr. Iacovacci is currently -- has asserted
9 claims against Brevet and a bunch of
10 individuals seeking moneys that have not
11 been paid to him as a result of his alleged
12 interests in the Brevet entities that you
13 just mentioned, correct?

14 A. Correct.

15 Q. Would you agree with me that [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]
[REDACTED] [REDACTED], if you could somehow
18 divert profitable assets from the entities
19 in which Partners and Holdings hold an
20 interest to another Brevet entity in which
21 Partners and Holdings don't hold an
22 interest, that you would be able to
23 artificially depress the potential damages
24 that Mr. Iacovacci would be entitled to if
25 a court agreed with his position regarding

1 D. MONTICCIOLO

2 his participation interests in Partners and
3 Holdings?

4 MR. SOLOMON: Object to the
5 question. Object to the
6 hypothetical. It also misstates the
7 witness's testimony.

8 Q. The one thing I can quibble
9 with there, I am not going to respond to
10 the other two, I didn't purport to state
11 your testimony, so I couldn't have
12 misstated it. But go ahead,
13 Mr. Monticciolo, I think you have the
14 question in your head.

15 A. It's a hypothetical.

16 And no.

17 Q. No.

18 Why not?

19 A. As I described the structure,
20 no.

21 Q. Why?

22 A. Because we don't have that
23 ability.

24 Q. You don't have the ability, [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]

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2 [REDACTED], to cause the
3 onshore fund to divest of profitable assets
4 that would otherwise have inured to the
5 benefit of its general partner, Partners,
6 and to their partners as members, including
7 Mr. Iacovacci.

8 A. I didn't say that.

9 Q. Okay. You do have the ability
10 to do that, right?

11 A. Again, if it's in the best
12 interest of all of the investors, that's
13 the job.

14 Q. Yes. You do have the ability
15 to do that, right?

16 A. If it's in the best interest of
17 all of the investors, yes.

18 Q. Have you ever done that?

19 A. I -- sitting here, I couldn't
20 tell you.

21 MR. CYRULNIK: Why don't we go
22 off the record for a minute.

23 THE VIDEOGRAPHER: The time is
24 11:55 and we are going off the
25 record. This is the end of media

1 D. MONTICCIOLO

2 unit No. 2.

3 (Whereupon, a brief recess was
4 taken.)

5 THE VIDEOGRAPHER: The time is
6 12:12 and we are back on record.
7 This is the beginning of media unit
8 No. 3.

9 CONTINUED EXAMINATION

10 BY MR. CYRULNIK:

11 Q. Welcome back, Mr. Monticciolo.
12 Before the break, we were talking about
13 through the various scenarios in which the
14 onshore fund was selling assets to the
15 offshore fund, do you generally recall that
16 discussion?

17 A. Yes. A bunch of hypotheticals.

18 Q. There were some hypotheticals
19 in there as well, yes.

20 Let me ask you, to your
21 knowledge, has the onshore fund ever sold
22 an asset or a piece of an asset to the
23 offshore fund without simultaneously
24 replacing that asset?

25 A. As I sit here, I couldn't tell

1 D. MONTICCIOLO

2 you.

3 Q. So it's possible that they
4 have?

5 A. Anything is possible.

6 Q. Well, beyond anything being
7 possible, can you tell me that the onshore
8 fund never sold an asset to the offshore
9 fund without replacing that asset?

10 MR. SOLOMON: In the increasing
11 question, you added --

12 I object to the question.

13 MR. CYRULNIK: Thank you.

14 A. Again, that could mean for five
15 minutes or an hour, so I don't think that's
16 a realistic question.

17 Q. Well, why don't we eliminate
18 any ambiguity there.

19 Would you be able to tell me
20 whether or not the onshore fund ever sold
21 an asset to the offshore fund without
22 replacing that asset?

23 MR. SOLOMON: And I object to
24 the question.

25 A. Yeah, can you repeat the

1 D. MONTICCIOLO

2 question?

3 Q. Did the onshore fund ever sell
4 an asset or a piece of an asset to the
5 offshore fund without replacing that asset?

6 A. Not to the best of my
7 knowledge.

8 Q. And what is the gap of time
9 between selling an asset and replacing an
10 asset, in your experience?

11 A. I couldn't answer that
12 accurately without looking.

13 Q. Did the onshore fund ever sell
14 an asset or a piece of an asset to the
15 offshore fund without replacing that asset
16 within, say, a period of time of a week or
17 less?

18 A. Again, I couldn't answer that
19 question.

20 Q. Is it possible that they did?

21 A. Again, I couldn't answer that
22 question.

23 Q. What about a month, did the
24 onshore fund ever sell an asset or a piece
25 of an asset to the offshore fund without

1 D. MONTICCIOLO

2 replacing that asset within a month?

3 A. Again, I can't answer that
4 question; I would need to look.

5 Q. Is it possible that they did?

6 A. Again, I can't answer that
7 question.

8 Q. Did the onshore fund ever sell
9 an asset or a piece of an asset to the
10 offshore fund without having a specific
11 replacement asset in mind at the time of
12 the sale?

13 A. I think you are
14 mischaracterizing how fund management or
15 the management of the fund works.

16 Q. In what way?

17 A. There are hundreds of assets
18 coming and going at all times and I can't
19 determine if the offshore fund and its
20 independent board is going to buy an asset,
21 so I can't control if I am selling assets
22 that they want to buy.

23 I am not controlling whether or
24 not there is a sale to be done there. We
25 are managing for the best interests of all

1 D. MONTICCIOLO

2 of the investors on the onshore to
3 basically maximize the returns and do the
4 best thing to meet the investment strategy.

5 Q. Well, I want to set the buy
6 side apart. Would you agree with me that
7 all of the transfers of assets or pieces of
8 assets from the onshore fund to the
9 offshore fund were effectuated via a sale?

10 MR. SOLOMON: You asked that a
11 while ago.

12 I object to the question; it
13 misstates his testimony.

14 Q. Yeah, I certainly -- just to be
15 clear, I am not mistaking your testimony,
16 because I didn't state your testimony one
17 way or the other; I just asked you a
18 question, so I don't understand --

19 MR. SOLOMON: We don't actually
20 agree on that. Okay, when a witness
21 tells you something and then in the
22 subsequent answer you misstate, I
23 consider it misstating testimony. I
24 think it's a proper objection.

25 MR. CYRULNIK: Yeah, Lou, I

1 D. MONTICCIOLO

2 would I would consider that
3 misstating testimony, also, because I
4 am stating testimony. My question
5 was a question.

6 Q. And, Mr. Monticciolo, if you
7 understood it otherwise, then you are
8 misunderstanding my question.

9 I didn't purport to say
10 something that you said, I asked you a
11 question and the question I asked you is
12 whether or not the onshore fund ever
13 effectuated a transfer of an asset to the
14 offshore fund through a transactional
15 method other than a sale.

16 MR. SOLOMON: Asked and
17 answered.

18 A. We only sell transactions on --
19 assets on arm's length sales.

20 Q. Did you say the only sales
21 transactions are arm's length sales or did
22 you mean to say the only transactions are
23 arm's length sales?

24 A. I don't know that -- can you
25 clarify what you are trying to clarify?

1 D. MONTICCIOLO

2 Q. I just want to make sure I am
3 using the terminology that is going to
4 cover all of the transfers.

5 Was there anything other than a
6 sale that would account for the transfer of
7 an asset or a piece of an asset from the
8 onshore fund to the offshore fund?

9 A. There are no transfers. It's
10 not -- that's completely incorrect. There
11 are sales; no transfers, sales.

12 Q. You don't view a sale as a type
13 of transfer?

14 A. Absolutely not.

15 Q. What is the difference between
16 a sale and a transfer?

17 A. Willing party, willing seller,
18 willing buyer.

19 Q. That's it?

20 A. Substantially different than
21 transfer.

22 Q. So you don't view a sale as a
23 subcategory of a type of transfer? I just
24 want to get your nomenclature down pat
25 here.

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2 A. I wouldn't.

3 Q. That is fine. So let's use
4 your terminology of sale. Willing seller,
5 willing buyer, what was the third piece?

6 A. Arm's length, willing seller,
7 willing buyer.

8 Q. Arm's length is a necessary
9 component of a sale, in your view?

10 A. My view, yes.

11 Q. Okay, let's take your
12 definition. With your definition, would
13 you agree with me that the only way that
14 assets moved from the onshore fund to the
15 offshore fund was through a sale process?

16 A. I would not say it was moved.
17 So I would say no.

18 Q. It's your position that no
19 assets moved from the onshore fund to the
20 offshore fund?

21 A. If you continue to use the word
22 moved, I would say no.

23 Q. I am using the word moved.

24 So it's your position that no
25 assets were moved from the onshore fund to

1 D. MONTICCIOLO

2 the offshore fund?

3 A. Assets were sold from the
4 onshore fund to the offshore fund.

5 Q. Is there any other transaction
6 other than a sale process through which an
7 asset that was originally under the
8 ownership or control of the onshore fund
9 ended up under the ownership or control of
10 the offshore fund or one of its vehicles?

11 A. Not that I am aware of. You
12 would have to ask the offshore board.

13 Q. Okay, well, I am asking you and
14 I appreciate that there is no other
15 mechanism for that other than sale that you
16 are aware of, so let me use sale now going
17 forward.

18 A. And I would like to qualify it
19 to be arm's length sale.

20 Q. That's fine. I mean, I didn't
21 give you what type of sale, but if that is
22 the qualification you would like to add --

23 A. It does matter.

24 Q. No problem.

25 Why does it matter?

1 D. MONTICCIOLO

2 A. Because we don't control it.

3 Q. Who is we?

4 A. Brevet or the investment
5 manager.

6 Q. You don't control what?

7 A. We don't control if the onshore
8 is going to buy the asset.

9 MR. SOLOMON: You just said
10 onshore.

11 Q. You do control whether --

12 A. The offshore, sorry.

13 MR. SOLOMON: Just let him
14 clarify.

15 A. Sorry. If the offshore is
16 going to buy the asset.

17 Q. And I understand that you are
18 testifying that you don't control whether
19 the offshore is going to buy the asset, you
20 do control whether the onshore is going to
21 be willing to sell the asset, right?

22 A. Correct.

23 Q. Who sits on the investment
24 committee of the investment manager; is it
25 just [REDACTED] [REDACTED] [REDACTED] [REDACTED] ?

1 D. MONTICCIOLO

2 A. At the current moment, yes.

3 Q. So it's fair to say that the
4 decisions that are made with respect to the
5 onshore fund's desire or willingness to
6 sell an asset to the offshore fund are made
7 by either [REDACTED] or a
8 combination of the two?

9 A. No.

10 Q. Why is it unfair to say what I
11 just said?

12 A. Because you made it -- you said
13 one or the other.

14 Q. Well, I had a third disjunctive
15 in there, which was or the two of you, to
16 make sure I was covering everything. At
17 least I thought. But if you are not
18 comfortable with that, why don't you state
19 it in your words.

20 A. It's unanimous approval from
21 Mark and myself.

22 Q. So every time every decision
23 that is made by the onshore fund to sell an
24 asset or a piece of an asset to the
25 offshore fund is made by both [REDACTED]

1 D. MONTICCIOLO

2 [REDACTED] [REDACTED] unanimously, correct?

3 A. At the recommendation of the
4 investment teams, correct.

5 Q. With the decisions made by [REDACTED]
6 [REDACTED] [REDACTED] together?

7 A. Yes.

8 Q. Unanimously?

9 A. Fair.

10 Q. Okay. Have you ever sold an
11 asset, have you ever effected the sale of
12 an asset by the onshore fund -- and by you,
13 I mean [REDACTED] [REDACTED] [REDACTED] [REDACTED]
14 [REDACTED] [REDACTED] [REDACTED] [REDACTED], have

15 you ever effected the sale of an asset from
16 the onshore fund to the offshore fund
17 without having in mind at the time of the
18 sale a different asset in which you wanted
19 to invest the funds that were being
20 liquidated in connection with that sale?

21 A. As I sit here, and as I have
22 answered before, we don't do it asset by
23 asset, because there are hundreds of assets
24 that are being funded and being recommended
25 to be sold.

1 D. MONTICCIOLO

2 Q. So if I am understanding your
3 answer, and I don't mean to put words in
4 your mouth, but I just want to dumb it down
5 for myself, there have been times and maybe
6 many times, because it's just not the way
7 you do things, there have been times where
8 you have effected the sale of an asset from
9 the onshore fund to the offshore fund
10 without having in mind that the funds that
11 were going to be generated by that sale for
12 the onshore fund would be invested in a
13 particular alternative asset or opportunity
14 at the time that you made the decision to
15 sell; is that a fair description of your
16 recollection?

17 A. That is not a fair description.

18 As I said, there are many
19 assets, we are not identifying a specific
20 asset, so I would say that's not a fair
21 depiction.

22 Q. Then I am having trouble, when
23 you say there are many assets, I am talking
24 a particular asset, right, I am talking
25 about an asset that [REDACTED] [REDACTED] [REDACTED] [REDACTED]

1 D. MONTICCIOLO

2 decided to sell from the onshore fund to
3 the offshore fund, okay, you are with me so
4 far?

5 A. Yes.

6 Q. Okay. That has happened,
7 right, [REDACTED] [REDACTED] [REDACTED] [REDACTED] have decided to
8 sell many assets from the onshore fund to
9 the offshore fund?

10 And I am talking only about the
11 selling piece of this, not who made the
12 decision to buy it.

13 A. No, we have approved the
14 recommendation of our investment teams to
15 sell assets.

16 Q. What do you mean to distinguish
17 between my phrasing of you have effected
18 the sale to you have approved the
19 recommendation of your investment teams,
20 what are you trying to capture?

21 A. It's not [REDACTED] [REDACTED] [REDACTED] choosing
22 them nor designating them.

23 Q. As the sole members of the
24 investment committee at the investment
25 manager for the onshore fund, is it your

1 D. MONTICCIOLO

2 testimony, sir, that [REDACTED] [REDACTED] [REDACTED] [REDACTED]
3 do not make the decisions to sell a
4 particular asset from the onshore fund to
5 any other entity?

6 A. What I have said is we approve
7 or deny recommendations to make investments
8 or sell investments.

9 Q. Would you characterize the role
10 that you play as investment manager as the
11 sole members of the investment committee at
12 the investment manager as making the
13 decision to sell or buy an asset?

14 A. We are making the decision
15 based on the recommendations that certain
16 actions should be taken to buy or sell or
17 originate assets.

18 Q. That is fine and I am glad that
19 there are other factors that you say factor
20 into what you do. I am focusing on what
21 you do.

22 You would agree with me that
23 you, ultimately, [REDACTED] [REDACTED] [REDACTED] [REDACTED]
24 unanimously make the decision of whether or
25 not to sell an asset from the onshore

1 D. MONTICCIOLO

2 fund's portfolio, fair?

3 A. To qualify it, we don't choose
4 which assets; we make the decision upon a
5 recommendation, yes.

6 Q. The recommendations that you
7 are alluding to come from who?

8 A. They come from either portfolio
9 management, investment team or even the
10 finance and compliance team.

11 Q. Where would I find the identity
12 of those various people that you just
13 referenced?

14 A. You could read the investment
15 memos or recommendations.

16 Q. And every time [REDACTED] [REDACTED]
[REDACTED] [REDACTED] decide to sell an asset from
18 the onshore fund, it is based on a written
19 investment memo that you have received from
20 one or more members of the committees you
21 just described?

22 A. There are recommendations,
23 investment memos, yes.

24 Q. So, the answer to my question
25 was yes?

1 D. MONTICCIOLO

2 A. Yes.

3 Q. Okay. Ultimately, none of
4 those individuals and none of those
5 committees have the ability to decide
6 whether to sell an asset from the onshore
7 fund's portfolio to the offshore fund,
8 correct?

9 A. Correct.

10 Q. Only [REDACTED] [REDACTED] [REDACTED] [REDACTED] have
11 the ability to make that decision, correct?

12 A. No.

13 Q. Who else?

14 A. You mischaracterize it that we
15 have the ability to sell to the offshore.
16 We have the ability to take the
17 recommendation that certain assets should
18 be sold and if we agree and if it's
19 reasoned and in the best interest of all of
20 the investors in the fund, being the
21 onshore investors, the LPs, then maybe or
22 maybe not the offshore will buy. I have no
23 control of that.

24 Q. And as I mentioned at the
25 outset of this line of questioning, I am

1 D. MONTICCIOLO

2 excluding the buy side of this thing. I
3 recognize that it's your view that you also
4 need a willing buyer and so I am assuming
5 that you have a willing buyer for purposes
6 of my question.

7 My question to you is focused
8 on the decision to sell, those are
9 decisions that are not made by people who
10 are working on the recommendations
11 committees or any of the other committees
12 that you identified a few moments ago,
13 correct?

14 A. I don't understand your
15 question.

16 Q. The decision to sell an asset
17 from the onshore fund is made by [REDACTED]
18 [REDACTED], yes or no?

19 A. As we said, the investment
20 committee approves or denies
21 recommendations for investment decisions
22 based on the recommendations that is in the
23 best interest of all of the investors, the
24 LPs of the onshore.

25 Q. It's your duty to ensure that

1 D. MONTICCIOLO

2 any sale of an asset from the onshore fund
3 is in the best interests of your investors,
4 correct?

5 A. Of all of the investors,
6 correct.

7 Q. If you had a personal
8 motivation, a personal incentive to sell an
9 asset that was performing, that is
10 performing, for example, because you held
11 an interest in the entity, direct or
12 indirect, in the entity that was purchasing
13 the asset, would you agree with me that
14 there is a conflict of interest that you
15 face as a member of the investment
16 committee that is deciding whether or not
17 to sell an asset that the onshore fund
18 holds an interest in?

19 A. No. There is no conflict of
20 interest. But that is not a possibility,
21 that is a hypothetical, that is not
22 possible.

23 Q. Why is that not possible,
24 Mr. Monticciolo?

25 A. I have answered this question

1 D. MONTICCIOLO

2 repeatedly.

3 Q. Well, I apologize if I missed,
4 but I don't think I even asked this
5 question before, so if you answered it in
6 anticipation, my apologies, but you will
7 have to answer it again.

8 A. Again, the investment committee
9 does not choose to sell, to buy, other
10 people do whose job it is to make those
11 recommendations and the offshore makes its
12 own arm's length, independent decision to
13 buy. So you have created a hypothetical
14 that I believe could not exist.

15 Q. Well, Mr. Monticciolo, you
16 understand the difference between making a
17 recommendation and making a decision,
18 right?

19 A. No. I think they are
20 distinctly different.

21 Q. I think that is what I just
22 asked, but maybe you misheard.

23 A. Okay.

24 Q. I said you understand the
25 difference between -- yeah, my question was

1 D. MONTICCIOLO

2 you understand the difference between
3 making a recommendation and making a
4 decision, correct?

5 A. Correct.

6 Q. Lots of people make
7 recommendations to you, as the CEO, right?

8 A. Correct.

9 Q. But, ultimately, you are the
10 one that's charged and allowed to make the
11 decisions based on the various
12 recommendations that you have gotten and
13 the various considerations that factor into
14 your calculus, correct?

15 A. If those decisions are based on
16 recommendations that I believe are
17 reasoned, that my staff and the
18 professionals, such as compliance, agree
19 that they are within the applicable rules,
20 laws and guidelines of how we operate, and
21 that I believe that it is correct, as well,
22 then I may approve it.

23 Q. Can you think of any decision
24 [REDACTED] made as a member of the investment
25 committee at the investment manager that

1 D. MONTICCIOLO

2 was not recommended by somebody else?

3 A. Not to the best of my
4 recollection.

5 Q. You can't think of a single
6 decision you made on the investment
7 committee that had not been previously
8 recommended by somebody else; is that
9 right?

10 MR. SOLOMON: Asked and
11 answered.

12 A. I answered that question.

13 Q. Yeah, I think you did also, I
14 am just clarifying to make sure I got it
15 right, so it would be helpful --

16 A. Yes.

17 Q. -- if you confirmed.

18 Yes. Okay.

19 A. Correct.

20 Q. Would you agree with me that it
21 is important for the people who are
22 ultimately making the decisions, based on
23 recommendations or otherwise, that those
24 people, those individuals be -- not be
25 conflicted or have ulterior motives that

1 D. MONTICCIOLO

2 would incentivize them to potentially make
3 decisions that were not in the interests of
4 the partners in the onshore fund?

5 MR. SOLOMON: I object to the
6 question; I object to its form.

7 A. I can't tell whether that's a
8 hypothetical question or not.

9 Q. It's not a hypothetical
10 question, it's just a question. There is
11 no hypothetical, there is no set of facts
12 that I am asking you to confirm or deny.

13 I am asking you whether or not
14 you would agree with me that it is
15 important to ensure that the decision
16 makers on an investment committee for a
17 registered investment adviser are not
18 conflicted in making decisions for an
19 entity.

20 A. I would think that -- I am not
21 an expert in that, but I would think that
22 would be part of some guidelines.

23 Q. And would you agree with me
24 that having personal incentives, that is
25 financial incentives that you could

1 D. MONTICCIOLO

2 potentially benefit from either by
3 transferring assets because you hold an
4 interest in the -- direct or indirect, in
5 the acquiring entity or financial interests
6 in the form of trying to depress the value
7 of somebody else's interests in the selling
8 entity, would you agree with me that you,
9 whether you acted on them or not, possess
10 incentives that are not entirely consistent
11 with the incentives that an individual
12 making investment decisions for the onshore
13 fund should possess?

14 MR. SOLOMON: Object to the
15 question.

16 A. I don't believe so, because of
17 the structure and the way the business
18 is -- the way the operation works that I
19 don't believe that that can happen.

20 Q. Well, maybe you can help me
21 understand why that is, Mr. Monticciolo, I
22 guess I am struggling.

23 You don't have a rule that the
24 onshore fund is not permitted to sell
25 assets to any entity in which you hold an

1 D. MONTICCIOLO

2 interest, correct?

3 MR. SOLOMON: I object to the
4 question.

5 A. I think we do have a rule that
6 says we can't do that, if I --

7 Could you repeat the question,
8 to make sure I got it right?

9 Q. Yes. Do you have a rule that
10 prevents the onshore fund from selling
11 assets to an entity in which you personally
12 hold a direct or indirect financial stake?

13 A. We have a rule that, as in all
14 funds do, that you need to have arm's
15 length sales.

16 Q. I am not sure what that means,
17 I just -- if you could just answer my
18 question.

19 Do you have a rule that
20 precludes the onshore fund from selling an
21 asset to an entity in which you hold a
22 direct or indirect interest?

23 A. I believe the answer to your
24 thing is you don't understand what that
25 means, which means that there is -- a

1 D. MONTICCIOLO

2 separate part of it makes sure that that
3 doesn't exist, that there is no conflict.

4 Q. I think you are jumping ahead a
5 couple of steps. My question is pretty
6 simple, do you have a rule that precludes
7 the onshore fund from selling assets to an
8 entity in which you, Douglas Monticciolo,
9 hold a direct or indirect interest, yes or
10 no?

11 A. I don't know we have that rule.
12 We have a rule that all sales
13 must be arm's length sales.

14 Q. Okay. So you don't have a rule
15 that precludes the onshore fund from
16 selling assets to an entity in which you
17 personally have a direct or indirect
18 financial stake; which would explain why,
19 for example, the onshore fund, based on
20 your view, is permitted to sell assets to
21 the offshore fund in which you do have a
22 direct or indirect financial stake,
23 correct?

24 MR. SOLOMON: I object to the
25 question; it misstates the testimony.

1 D. MONTICCIOLO

2 A. That is not accurate. That is
3 not what I said. We do not sell, we offer.
4 That is -- a sale takes two parties. We
5 offer.

6 Q. Sorry, what part of what I said
7 was inaccurate, Mr. Monticciolo?

8 A. You said that we sell those
9 assets. They could be sold, but they are
10 bought by an independent arm's length
11 party.

12 Q. And, again, to the extent you
13 keep on retreating to the question of
14 buying, I appreciate the fact that there
15 has to be a buyer and so I am not -- I am
16 building that into my question, I am
17 focusing exclusively on the rules that
18 exist within Brevet on the sell side.

19 And so, on the sell side,
20 unlike on the buy side, where you are
21 telling me that there are independent
22 people who ultimately make the call as to
23 whether to buy, the people who ultimately
24 make the call as to whether to sell include
25 people like you, who are permitted to hold

1 D. MONTICCIOLO

2 financial interests in the buyer, correct?

3 A. Incorrect.

4 You are not clarifying only
5 under the conditions that the sale or any
6 other activity could be executed under an
7 arm's length condition, which eliminates
8 your, you know, conflict.

9 Q. What do you mean by arm's
10 length condition in the answer that you
11 just gave?

12 A. It has to be an arm's length
13 sale.

14 Q. What does that mean?

15 A. Fully independent, as we have
16 said before, I have answered this question,
17 independent, willing buyer, willing seller.

18 Q. That's it, that's what you mean
19 by arm's length sale, that the buyer is
20 fully willing and that the seller is fully
21 willing?

22 A. Again --

23 MR. SOLOMON: I thought he
24 said -- I'm sorry.

25 You just misstated -- maybe you

1 D. MONTICCIOLO

2 didn't hear, but you have not
3 included something that the witness
4 said in his answer.

5 MR. CYRULNIK: Okay, if I
6 didn't include it, I am sure he will
7 answer; that's why I asked him the
8 follow-up question.

9 Q. Is that what you mean by arm's
10 length, Mr. Monticciolo, that there is a
11 willing buyer and a willing seller?

12 A. No. I didn't say that.

13 I said there is independent
14 willing buyer and willing seller amongst --
15 and we can go into how that is decided,
16 because it's not decided by me --
17 independent parties that ensure that there
18 is an independent willing buyer in these
19 transactions.

20 Q. Who are the independent parties
21 that ensure that there is an independent
22 buyer in these transactions?

23 A. I answered that question
24 already earlier.

25 Q. Perhaps you did, but that is

1 D. MONTICCIOLO

2 not going to advance the ball here. I
3 assure you that have no interest in asking
4 you questions that I have already heard the
5 answer to, so I would just appreciate if
6 you could answer my question, especially if
7 it's not obvious what the answer was
8 previously.

9 A. The answer was obvious, it's
10 the independent board of the offshore that
11 makes the buy decisions.

12 Q. Yeah, this is where I am
13 getting hung up, Mr. Monticciolo, I get on
14 the buy side that there is an independent
15 board, according to you, that makes the
16 decisions as to whether to buy, I am
17 focusing right now exclusively on the
18 decision of whether to sell.

19 A. And I am clarifying that one
20 doesn't exist without the other.

21 Q. Someone can't decide to sell
22 without someone deciding to buy; is that
23 what you mean by that?

24 A. It would be foolish otherwise,
25 wouldn't it?

1 D. MONTICCIOLO

2 Q. I don't know, I am not here to
3 answer your questions. I am not sure that
4 it would, but if that's your view, that's
5 your view.

6 Whether or not you think the
7 two exist -- need to both exist at the same
8 time, my question is about the sell side,
9 Mr. Monticciolo.

10 On the sell side and only the
11 sell side, would you agree with me that if
12 the individual making the decision of
13 whether to sell holds a financial interest
14 in the buying side, assuming someone else
15 decides that the buying side is going to
16 accept the sale offer, would you agree with
17 me that potential conflicts of interest
18 exist for the investment manager making the
19 decision to sell, yes or no?

20 MR. SOLOMON: Object to the
21 question.

22 A. No.

23 Q. And why would you disagree with
24 that?

25 A. Again, because it's an

1 D. MONTICCIOLO

2 independent arm's length buyer.

3 Q. Apart from the fact that there
4 is an independent arm's length buyer, is
5 there anything else that is constraining
6 your ability to make a decision to sell an
7 asset from the onshore fund?

8 A. Absolutely.

9 Q. What's that?

10 A. It's got to be in the best
11 interest of all of the investors in the
12 onshore.

13 Q. Because if it's not in the best
14 interest of the all of the investors, you
15 could face massive liabilities from your
16 investors, correct?

17 A. I wouldn't speculate.

18 Q. You don't know, one way or the
19 other, if you were selling assets from the
20 onshore fund that were not in the interest,
21 those sales were not in the interest of
22 those investors, you don't know one way or
23 the other if you could face massive
24 liabilities as the investment manager for
25 that fund?

1 D. MONTICCIOLO

2 A. If that one thing of selling
3 that asset was a cause for our problem.
4 It's a hypothetical question. I really
5 think it's not realistic.

6 Q. If you were selling funds from
7 the onshore fund, [REDACTED] [REDACTED] [REDACTED]
8 [REDACTED] [REDACTED], with the goal of
9 depressing the amount of damages that you
10 thought Mr. Iacovacci could retrieve in
11 this litigation, you would agree with me
12 that you could face massive liabilities to
13 your many limited partners in the onshore
14 fund, correct?

15 MR. SOLOMON: I object to the
16 question. I object to the complete
17 hypothetical.

18 A. That is a hypothetical
19 question, I can't answer that.

20 Q. You don't know?

21 A. I couldn't tell.

22 Q. Do you think it's consistent
23 with your fiduciary duties to your
24 investors to sell assets from the onshore
25 fund to the offshore fund without either

1 D. MONTICCIOLO

2 simultaneously replacing the asset or
3 having in mind a particular use for the
4 funds that would be generated from the sale
5 of the asset?

6 A. I have answered this question
7 already, yes.

8 Q. What if the asset was a
9 profit-generating, performing asset, same
10 answer?

11 A. Again, it's a hypothetical
12 question, taken out of context.

13 It could be, yes.

14 Q. And with respect to what
15 actually happened, you would agree with me
16 that as the investment committee, [REDACTED] [REDACTED]
[REDACTED] [REDACTED] have approved or effectuated
18 the sale of many assets over the years,
19 over the last five years that were
20 performing well, the sale of those assets
21 from the onshore fund to the offshore fund,
22 fair?

23 A. No.

24 Q. You have not?

25 A. No.

1 D. MONTICCIOLO

2 That's not what you asked,
3 though.

4 Q. You have not approved the sale
5 or effectuated the sale of assets that were
6 performing well, the sale from the onshore
7 fund to the offshore fund over the last
8 five years?

9 A. If you are limiting it to just
10 that, then the answer is no.

11 Q. Why is that? What am I leaving
12 out of the question to make the answer yes?

13 A. Performing well.

14 Q. I am leaving out performing
15 well, you are saying?

16 A. You are conditioning the answer
17 on performing well.

18 Q. Okay, so it's your testimony
19 that you have not sold assets from the
20 onshore fund to the offshore fund where
21 those assets had been performing well at
22 the onshore fund level?

23 MR. SOLOMON: I object to the
24 phrase selling assets, given the
25 witness has now said 15 times.

1 D. MONTICCIOLO

2 Q. Mr. Monticciolo, do you
3 understand what I mean by selling assets?

4 A. Assets regardless of their
5 performing status if there is a willing
6 buyer.

7 Q. No, but my question was
8 specifically -- I mean, I was asking you
9 what I just asked you, because I didn't
10 understand Mr. Solomon's objection. But I
11 was not building into the word assets the
12 performance, I actually had a separate part
13 of the question that described their
14 performance, so let me try it again.

15 Yes or no, have you approved or
16 effectuated the sale of assets that were
17 performing well for onshore funds to
18 offshore funds?

19 A. We may have, I have to look.

20 Q. Okay. Do you know whether you
21 have done that dozens and dozens of times
22 over the last five years?

23 A. I don't know, I would have to
24 look.

25 Q. Mr. Monticciolo, where does the

1 D. MONTICCIOLO

2 bulk of your compensation from Brevet come?

3 From where does the bulk of your

4 compensation from Brevet come?

5 A. From Brevet Capital Management.

6 Q. That's the investment manager?

7 A. Correct.

8 Q. And how is your compensation
9 determined at the Brevet Capital Management
10 level?

11 A. My compensation is determined
12 after the various teams, HR, et cetera
13 determine compensation for the rest of the
14 firm.

15 Q. Is your compensation a
16 percentage of some metric like
17 profitability or performance or is it
18 not --

19 A. No.

20 Q. -- not that formulaic?

21 A. Not that formulaic.

22 Q. Is your compensation tied to
23 the performance of the assets or the funds
24 who you provide investment management
25 services to?

1 D. MONTICCIOLO

2 A. Given we are in the investment
3 management business, tied to would mean
4 that's our source of revenue.

5 Q. So --

6 A. Then yes.

7 Q. Okay, I -- can you just repeat?
8 Maybe there was something loud over here, I
9 just missed one word from your answer.

10 A. Sure. So if tied to means
11 that's our only source of revenue because
12 we are in the investment management
13 business, then I would say yes, tied to.

14 Q. What I meant by tied to is is
15 it a function of, that is, does your
16 compensation get determined on the basis of
17 the performance of the assets that you
18 are -- and funds to which you are providing
19 investment advisory services?

20 A. Not directly, but obviously
21 indirectly; if it doesn't perform well,
22 then there is nothing to be paid on.

23 Q. Do you get -- is the
24 compensation that you get based on the
25 total value of assets under management?

1 D. MONTICCIOLO

2 A. No.

3 Q. That doesn't play a role in
4 the --

5 A. Again, tied to, yes.

6 Q. Okay. Can you give me a feel
7 for what your total compensation has been,
8 say, last year?

9 MR. SOLOMON: No.

10 Why is that relevant?

11 Q. Mr. Monticciolo, can you --

12 MR. SOLOMON: I am not going to
13 let him answer that question until
14 you tell me why that's relevant.

15 MR. CYRULNIK: Well, I am sure
16 you can understand why it's relevant,
17 but I'm happy to explain it on the
18 record, Mr. Solomon.

19 We are here talking about the
20 profitability of Brevet and how
21 various incentives for
22 Mr. Monticciolo may affect the
23 decision making that was made and I
24 think a basic question is to
25 understand how his compensation works

1 D. MONTICCIOLO

2 and what it looks like. So I will
3 ask the --

4 MR. SOLOMON: I think in
5 respect to the entities in which your
6 client had an interest, I am not
7 going to instruct him not to answer,
8 but I don't see how anything else is
9 relevant and I think it's completely
10 intrusive and improper.

11 MR. CYRULNIK: Well, you are
12 entitled to your opinion and I think
13 you have expressed your opinion, with
14 all due respect, Mr. Solomon, many
15 times to the courts and I don't think
16 any of them have agreed.

17 But setting aside the question
18 of whether you have your opinion, I
19 am asking the question to the
20 witness; if you want to instruct the
21 witness not to answer the question,
22 you know, that's your call and,
23 obviously, we will proceed
24 accordingly and if we need to raise
25 the issue for the court, that's fine.

1 D. MONTICCIOLO

2 I simply asked a basic question
3 that, candidly, I didn't expect you
4 to object to.

5 MR. SOLOMON: First of you all,
6 I don't know what you are talking
7 about, I have no -- I think you are
8 just wrong. But, in any event,
9 misphrased. I am instructing him not
10 to answer the question.

11 Q. Mr. Monticciolo, are you going
12 to follow that instruction and decline to
13 tell me what your total compensation was
14 last year from the Brevet entities?

15 A. I am going to follow the
16 instruction of my attorneys.

17 Q. Okay.

18 MR. CYRULNIK: Well, we are
19 going to need to -- we are going to
20 reserve rights on that. Because I
21 see no basis at all for instructing
22 the witness not to answer.

23 MR. SOLOMON: I instructed on
24 the question that you asked.

25 Q. Well, it sounds like there may

1 D. MONTICCIOLO

2 be some game being played, so let me make
3 sure that the question I asked is the
4 question that I just asked you,
5 Mr. Monticciolo.

6 My question to you is can you
7 tell me what your total compensation from
8 the Brevet entities was in 2020?

9 MR. SOLOMON: By the way, by
10 the way, lay a foundation that he has
11 any knowledge, okay. Because I do
12 intend to instruct -- but I am not
13 sure we have to fight over it if he
14 doesn't know.

15 MR. CYRULNIK: Okay, well,
16 that's my question. If you want to
17 object on foundation grounds, that's
18 fine.

19 Q. But that's my question,
20 Mr. Monticciolo.

21 MR. SOLOMON: There is no
22 foundation, unless you can establish
23 (inaudible) --

24 MR. CYRULNIK: Mr. Solomon, as
25 you know, objections on foundation

1 D. MONTICCIOLO

2 grounds are to be preserved with

3 objection to form or I have --

4 MR. SOLOMON: I don't need it.

5 I don't need it.

6 MR. CYRULNIK: If I could just

7 finish speaking and then you can say

8 your piece.

9 You made an objection on

10 foundation grounds I have allowed you

11 to state, but that doesn't in any way

12 implicate the witness's answer to the

13 question.

14 So if you want to make an

15 objection to the form of the question

16 or to the foundation issues, feel

17 free, but my question stands and

18 unless you are giving the witness an

19 instruction not to answer the

20 question I asked, I would ask

21 Mr. Monticciolo to please provide me

22 with his answer.

23 MR. SOLOMON: In answering the

24 question, I want you to state whether

25 you have knowledge --

1 D. MONTICCILO

2 MR. CYRULNIK: Mr. Solomon,
3 that's inappropriate.

4 MR. SOLOMON: (Inaudible.)

5 MR. CYRULNIK: It's
6 inappropriate, Mr. Solomon.

7 MR. SOLOMON: You can't avoid,
8 you can't avoid --

9 MR. CYRULNIK: Mr. Solomon,
10 it's inappropriate --

11 MR. SOLOMON: I said what I
12 said, if you want to go take it to
13 the judge, let's go.

14 MR. CYRULNIK: Mr. Solomon,
15 it's inappropriate for you to be
16 interacting with the witness on what
17 you want his answer to include in the
18 middle of a deposition and you know
19 that, please.

20 MR. SOLOMON: Okay, that is not
21 what I did.

22 Q. The question was
23 straightforward, I am asking you if you can
24 tell me how much compensation you received
25 from Brevet-related entities in 2020.

1 D. MONTICCILO

2 A. As I sit here, I don't know.

3 Q. Can you give me your best
4 estimate?

5 A. As sit here, no.

6 Q. More or less than a million
7 dollars?

8 A. Again, that would be an
9 estimate.

10 MR. SOLOMON: Don't guess.

11 Q. You don't know, sitting here
12 today, whether your total compensation from
13 Brevet-related entities in 2020 exceeded a
14 million dollars?

15 A. Without looking, I am telling
16 you I don't know.

17 Q. And you understand that you are
18 under oath?

19 A. Yes, sir.

20 Q. Do you know whether your total
21 compensation from Brevet-related entities
22 in 2020 exceeded \$50 million?

23 A. I don't have to guess on that,
24 no.

25 Q. Okay. Do you know whether it

1 D. MONTICCIOLO

2 exceeded \$10 million?

3 A. Again, I don't know.

4 Q. Do you know whether it exceeded
5 \$500,000?

6 A. Again, I would be guessing, I
7 don't know.

8 Q. Do you know whether it exceeded
9 \$250,000?

10 A. Again, are you including my
11 salary?

12 Q. I am including all forms of
13 funds that were paid to you by one or more
14 Brevet-related entities, salary, profits,
15 interest, incentives, whatever you could
16 think of that you received from
17 Brevet-related entities in 2020.

18 A. As I said, I don't know.

19 Q. Do you have a salary,
20 Mr. Monticciolo?

21 A. I do not.

22 Q. Can I ask why you asked me
23 whether I was including salary if you don't
24 have one?

25 A. I was trying to figure out what

1 D. MONTICCIOLO

2 would be in your total compensation
3 conversation question.

4 Q. You understand what total
5 compensation means now, at least as I used
6 it, right?

7 A. Vaguely, but yes.

8 Q. Do you know how much you
9 received as an investment manager from the
10 investment management entity?

11 A. No, I do not.

12 Q. Do you know what the total
13 assets under management for Brevet was in
14 2020?

15 A. I would have to look. No.

16 Q. Would you have a ballpark
17 figure for me?

18 A. I would -- I would have to be
19 guessing.

20 Q. Well, would you know if it was
21 greater or less than \$500 million?

22 A. I would have to ask the
23 question of what do you mean by under
24 management?

25 Q. Have you ever spoken with

1 D. MONTICCIOLO

2 investors who have asked you what is the
3 total AUM or assets under management of
4 Brevet?

5 A. As I sit here, I don't recall.
6 Not the person who has those types of
7 conversations.

8 Q. You don't recall ever having
9 such a conversation?

10 A. Specifically that conversation?

11 Q. Not specifically that
12 conversation, do you recall ever being
13 asked by a prospective investor or an
14 investor what the total AUM or assets under
15 management of Brevet is?

16 A. I would say possibly.

17 Q. Okay. Well, if someone asked
18 you that question now, what would you
19 answer?

20 A. I mean, I would have to go
21 look, because I would want to be accurate.

22 Q. If a prospective investor
23 followed up your answer along those lines
24 with well, Mr. Monticciolo, can you just
25 give me a feel for the total AUM without

1 D. MONTICCIOLO

2 holding you to it, what is your best
3 understanding of the total assets under
4 management figure for Brevet, sitting here
5 today?

6 A. I wouldn't guess in a regulated
7 business to put that answer out.

8 Q. Who are you meeting with
9 tonight?

10 A. I can't disclose that.

11 Q. Well, is it a prospective
12 investor?

13 A. No.

14 Q. No.

15 MR. SOLOMON: Did you ask who
16 he's meeting with tonight?

17 MR. CYRULNIK: Yes, I did.

18 MR. SOLOMON: I object to the
19 question.

20 Q. If the individual with whom you
21 are meeting with today sits down to dinner
22 and says Doug, curious how Brevet is doing,
23 can you give me a feel for ballpark what
24 are the total assets under management, what
25 would you tell that individual?

1 D. MONTICCIOLO

2 A. I would say if you are
3 interested in learning about Brevet, you
4 can talk to my marketing people.

5 Q. Truly remarkable. Okay.

6 MR. SOLOMON: You know, you
7 shouldn't comment like that, that's
8 improper.

9 MR. CYRULNIK: What did you
10 say, Lou?

11 MR. SOLOMON: I said your
12 commenting is improper.

13 MR. CYRULNIK: I will withdraw
14 my comment if you found that
15 problematic or --

16 Q. I didn't mean to offend you in
17 any way, Mr. Monticciolo. Were you
18 offended by the fact that I found it
19 remarkable that you didn't know the total
20 assets under management?

21 A. I think you are adversely
22 assuming who the conversation was with and,
23 potentially, yes.

24 Q. What do you mean by that?

25 A. What I said.

1 D. MONTICCIOLO

2 Q. Well, and what I said doesn't
3 help me, can you explain what you meant by
4 I was assuming who the conversation was
5 with?

6 A. Again, no, I would rather not
7 comment.

8 Q. I understand that, but if
9 deponents were able to answer questions
10 with I would rather not answer, we wouldn't
11 have very effective depositions.

12 MR. SOLOMON: I don't think
13 this has anything to do with this
14 case at all. Now you want to ask him
15 questions about whether you offended
16 him.

17 MR. CYRULNIK: Oh, no, I
18 already asked him that question based
19 on your comment and I wanted to make
20 sure that there was no offense
21 intended and the witness understood
22 that. But then he gave --

23 MR. SOLOMON: Whether it was
24 intended, I made the comment that I
25 did. If you have any other

1 D. MONTICCIOLO

2 questions, we should move on.

3 MR. CYRULNIK: No, I just
4 wanted to understand what the witness
5 meant when he said what he said about
6 thinking that who I was talking to.

7 Q. Or whatever you had in mind, I
8 wanted to understand that. Because it may
9 facilitate some of the follow-up questions
10 here. It sounds like you have something in
11 mind that I may not be appreciating.

12 So what did you mean when you
13 said that?

14 A. That that wouldn't even be a
15 question.

16 Q. That the total assets under
17 management --

18 Oh, you mean that you would
19 never get that question tonight?

20 A. Possibly.

21 Q. Oh, I see what you mean. Okay.
22 Yeah, that's possible. You didn't tell me
23 who you were meeting with, so I was only
24 left to guess and to use it as an example.

25 It's fair to say, sitting here

1 D. MONTICCIOLO

2 today, you can't tell me within
3 \$250 million your best guess of what the
4 total assets under management at Brevet is?

5 A. Correct.

6 Q. Okay.

7 A. Without looking, I would not do
8 that; that would be a guess.

9 Q. And if I told you that I
10 expressly understand that you are giving me
11 your best estimate and that I am not
12 seeking to hold you to any obligations
13 under the Investment Advisers Act or
14 otherwise, would you feel more comfortable
15 giving me an estimate of what the total
16 assets under management is or would you
17 still be unable to do so?

18 A. You can't waive that, so I
19 would not.

20 Q. Okay. Have the assets under
21 management figure gone up from -- year over
22 year from 2015 to 2016?

23 A. So the years 2015 to 2016?

24 Q. Yes.

25 A. I couldn't tell you, I would

1 D. MONTICCILO

2 have to look.

3 Q. How about from 2015 to 2018?

4 A. Again, I couldn't tell you, I
5 would have to look.

6 Q. How about from 2015 until
7 today, 2020, let's say, do you know whether
8 the AUM figure has gone up between those
9 years year over year?

10 A. Yes.

11 Q. Okay. Is there a document that
12 I would be able to look at that would
13 accurately report Brevet's total assets
14 under management as of, say, now or another
15 given date?

16 A. There are public filings.

17 Q. What public filing in
18 particular would I look at if I wanted to
19 know the AUM figure for any given year?

20 A. You would have to talk to
21 compliance. I don't recall the global name
22 for it, but it's true for every manager.

23 Q. Sorry, the first part of the
24 answer got robotic over there, what was
25 that?

1 D. MONTICCIOLO

2 A. You would have to speak to our
3 compliance folks or get the documents, but
4 there are filings every year.

5 Q. Fair enough. But, sitting here
6 today, you don't know what document I could
7 consult to find out the total AUM, assets
8 under management, for Brevet on any given
9 date or year?

10 A. Correct, as I sit here, I do
11 not know the specific name of the document
12 that you are looking for.

13 Q. Yeah, I just want to account --
14 I am not saying that you are doing this,
15 but sometimes witnesses do, I am not
16 holding you to a specific name, if you
17 could give me the general description of
18 the document that you have in mind, even if
19 the name is slightly different, that would
20 be fine, too.

21 Do you have a particular
22 document in mind that you would be able to
23 direct me to, even if you don't know what
24 it's formally called?

25 A. It would be on our SEC

1 D. MONTICCIOLO

2 registration materials.

3 Q. Those are filed annually?

4 A. As I sit here, I don't know,
5 but I believe that at least annually.

6 Q. We talked a little bit about
7 criteria for investments, I want to just
8 understand a little bit about Brevet's
9 business.

10 Did Brevet extend financing --

11 MR. CYRULNIK: Withdrawn. Let
12 me ask a different question first.

13 Q. Are you familiar with the term
14 family office?

15 A. In the words that it's a very
16 vague concept, but yes.

17 Q. Have you used that term or
18 heard that term used at Brevet to describe
19 the need to have capital invested by an
20 originator in addition to financing that
21 was being extended from Brevet?

22 MR. SOLOMON: I object to the
23 question.

24 A. Yeah, actually, I don't
25 understand the question. Sorry.

1 D. MONTICCIOLO

2 Q. Would Brevet extend financing,
3 if someone came to you with a deal, with a
4 prospective financing, would Brevet require
5 that sourcing source, for lack of a better
6 term, and I am sure you will tell me --

7 I was going to call it an
8 originator, because I think that was the
9 term that was used in a different
10 deposition, but it sounded to me like you
11 distinguish between origination and
12 sourcing and so I don't want to use the
13 term origination for that reason, so you
14 will excuse me for using the awkward phrase
15 sourcing source until you tell me what you
16 would call this individual.

17 But if a sourcing source
18 approached Brevet with a prospective
19 financing opportunity, would Brevet want
20 that sourcing source to be involved in --
21 to have skin in the game, to have its own
22 financing -- piece of that financing
23 transaction in order for Brevet to be
24 willing to get involved in the underlying
25 deal?

1 D. MONTICCILO

2 MR. SOLOMON: I object to the
3 question.

4 A. So ex -- so could you clarify
5 who was supposed to have skin in the game?

6 Q. Yeah, so maybe we should just
7 start with some terminology that you can
8 tell me that you are comfortable with, so I
9 can use that in the question.

10 If someone comes to you, if
11 someone comes to -- you had a department
12 that was in charge of sourcing at Brevet; is
13 that right?

14 A. Correct.

15 Q. And those are people who would
16 find opportunities for financing deals that
17 through which Brevet could deploy its
18 capital?

19 A. Amongst others, yes.

20 Q. Okay. Those sourcing people
21 would be approached by, sometimes by
22 individuals who had potential
23 opportunities; is that fair? Do you
24 understand what I mean by that?

25 A. That's a little vague. Can you

1 D. MONTICCIOLO

2 clarify that?

3 Q. Potential financing
4 transactions that Brevet might -- that they
5 thought Brevet might be interested in.

6 A. So someone who is not a Brevet
7 sourcing person is being -- has something
8 from someone else that is being brought to
9 our sourcing person?

10 Q. That's right.

11 Would that happen with some
12 frequency?

13 A. I -- well, as I sit here, I
14 could tell you, you know, not definitively,
15 but I would be surprised if it doesn't.

16 Q. Right. What would you refer to
17 that person as; a broker, a sourcing
18 source? I am sure you wouldn't refer to
19 them as a sourcing source, but you will
20 tell me what word is appropriate for
21 your parlance.

22 A. I like the new phrase.

23 Q. What did you say?

24 A. I like the new phrase, sourcing
25 source.

1 D. MONTICCIOLO

2 It depends on what role they
3 are playing.

4 Q. In the transaction?

5 A. Yes.

6 Q. Okay. Let's say you have just
7 a third party who has lots of contacts with
8 businesses that are interested in financing
9 and he knocks on the door of one of your
10 sourcing people at Brevet and says I have a
11 company that needs financing, what term can
12 we use for purposes of the ensuing
13 questions to refer to that individual?

14 A. Someone who is presenting a
15 deal to Brevet.

16 Q. Nice and pithy.

17 A. There's many, there's many
18 distinct titles of people who could bring
19 those deals.

20 MR. SOLOMON: You are talking
21 about the third party that you
22 mentioned in your question?

23 MR. CYRULNIK: I am.

24 Q. Would broker be one way of
25 referring to the individual I just

1 D. MONTICCILOLO

2 described, Mr. Monticciolo?

3 A. That could be one of the
4 categories.

5 Q. Okay. So let's use a broker
6 for example. I will use the term --

7 Actually, you know what, I will
8 use your non-pithy term, just so that we
9 are covering all of our bases. If you
10 think of a pithier term, you will let me
11 know, because it might get us out of here
12 quicker. Or more quickly.

13 So someone who has a source --
14 who has a -- I forgot your lengthy term
15 now. Is it someone who had a --

16 MR. SOLOMON: Presenting a
17 deal.

18 MR. CYRULNIK: What was --
19 someone who is presenting a deal?

20 MR. SOLOMON: Presenting a
21 deal.

22 MR. CYRULNIK: Yes, all right.

23 Q. If someone was presenting a
24 deal --

25 What is the difference between

1 D. MONTICCIOLO

2 someone who is presenting deal and a
3 broker; is a broker a subcategory of the
4 broader category of someone who is
5 presenting a deal?

6 A. It's an attribute of a broker.

7 Q. An attribute of a broker is
8 that he's presenting deals?

9 A. That's one attribute that could
10 describe a broker.

11 Q. Okay, can you caption for me
12 what other key attributes would make the
13 individual that I'm talking qualify as a
14 broker?

15 A. They're a broker dealer.
16 They're a registered broker dealer.

17 Q. Okay. If someone is presenting
18 a deal to Brevet for potential financing,
19 would Brevet have a requirement that that
20 someone also have skin in the game in the
21 form of extending some portion of the
22 financing themselves or through an entity
23 in which they had an interest?

24 A. That's a very hypothetical,
25 general question.

1 D. MONTICCILO

2 Q. Well, I didn't mean it to be
3 hypothetical. I mean, I was just asking
4 whether or not Brevet had that criteria as
5 something that it wanted or demanded in
6 terms of potential financing. If the
7 answer is no, the answer is not. I wasn't
8 giving you a hypothetical.

9 A. It's very -- I would have to
10 see the specific transaction. So, as I sit
11 here, I couldn't tell you if that is in our
12 policies or not or if that is something
13 that is standard.

14 Q. Well, let me ask it the other
15 way, can you think of any time that Brevet
16 was presented with a potential financing
17 that in response to which Brevet said to
18 the third party who had presented that
19 financing that it would only proceed with a
20 deal if the third party also invested some
21 of its own funds in the transaction?

22 A. I don't recall.

23 Q. One way or the other, you don't
24 know whether Brevet ever did that?

25 A. I don't.

1 D. MONTICCIOLO

2 We do literally thousands of
3 deals.

4 Q. And the thousands of deals, you
5 wouldn't know whether you have ever
6 demanded that a third party who brought you
7 a deal demonstrate skin in the game or that
8 they have an interest that is aligned with
9 yours with respect to extending financing
10 to the borrower?

11 A. Again, you said third party
12 versus broker, I don't recall specifically
13 any scenario. We do a lot of transactions.

14 Q. How about broker, if I use the
15 term broker for the question, would your
16 answer be different?

17 A. Again, I don't know.

18 Q. You don't know one way or the
19 other whether you have ever demanded that a
20 broker have skin in the game or be part of
21 a transaction in order for Brevet to be
22 willing to extend the financing at issue?

23 A. Again, I don't know.

24 Q. Okay. And I take it the term
25 family office to describe the third party

1 D. MONTICCIOLO

2 or broker having skin in the game, that is
3 having an aligned financial interest with
4 Brevet's in the transaction and the payback
5 of the financing is not a term that you are
6 familiar with?

7 A. That doesn't -- the way that
8 you are presenting or stating it seems --
9 it's confusing and vague.

10 Q. I am just asking whether you
11 have ever used or heard the term family
12 office used in the general context that I
13 just described.

14 A. I don't recall.

15 Q. Okay. That's fair enough.

16 When did you first meet
17 Mr. Iacovacci?

18 A. I, actually, don't specifically
19 recall.

20 Q. Did you recruit him to join
21 Brevet?

22 A. In my sole capacity, no.

23 Q. What do you mean by in my sole
24 capacity?

25 A. You said did I approve him, the

1 D. MONTICCIOLO

2 answer is --

3 Q. Oh, I didn't say approve. I
4 said did you recruit.

5 A. Oh, recruit.

6 Q. Yeah.

7 A. I don't think we were -- we do
8 things like recruit like that, I don't
9 think.

10 Q. Did you recruit Mr. Callahan to
11 join Brevet? Or the Brevet family of
12 companies. I don't mean to limit it to a
13 particular entity.

14 A. I don't recall.

15 Q. Okay. Back to Mr. Iacovacci,
16 do you recall whether you recruited him?

17 A. I, I don't recall.

18 Q. Do you recall how soon after
19 you cofounded or founded Brevet
20 Mr. Iacovacci joined the company?

21 A. I don't recall.

22 Q. Does 2004 sound right as to
23 when Paul first started working at Brevet?

24 A. I, I would be guessing.

25 Q. Do you know whether when

1 D. MONTICCIOLO

2 Mr. Iacovacci first started working at
3 Brevet he also was a member of one or more
4 of the companies?

5 A. I don't recall.

6 Q. Do you remember him being made
7 a member of one or more of the Brevet
8 companies?

9 A. The event of making him a
10 member, I don't recall.

11 Q. Do you know whether he was made
12 a member based on his performance?

13 A. I don't recall.

14 Q. Can you give me a feel for
15 roughly how many individuals have been
16 named members since Brevet's founding?

17 A. I would be guessing on the
18 number.

19 Q. What is your best guess?

20 A. Less than ten.

21 Q. All right, yourself,
22 Mr. Callahan, Mr. Tripp, Mr. Iacovacci, any
23 others come to mind?

24 A. I just don't recall.

25 Q. So, sitting here today, no

1 D. MONTICCIOLO

2 other names come to mind?

3 A. Again, I don't recall.

4 Q. Did Mr. Iacovacci's role at
5 Brevet change over time?

6 A. I believe it did.

7 Q. Can you describe for me the
8 evolution of his role over time?

9 A. I don't recall exactly the
10 evolution or change in those roles.

11 Q. If you don't recall exactly,
12 that's okay, I just want your best
13 recollection.

14 A. I recall we were just trying
15 to -- we were trying to work it out
16 somewhere that he could be productive
17 within the firm.

18 Q. I am not sure that is what I
19 had in mind.

20 Can you describe for me the
21 role he played at Brevet when he first
22 started or as early as you can remember and
23 then whatever point in time you remember
24 that changing or evolving, that new role?

25 A. I don't recall the specifics

1 D. MONTICCIOLO

2 on, on those transitions. I know the role
3 changed, but it was -- I think it was
4 because something wasn't working out and
5 we, we wanted to -- we liked Paul, so.

6 Q. Did you say you liked Paul?

7 A. I like Paul.

8 Q. Yeah, he seems like a good guy.

9 What is your best recollection
10 of the various departments in which
11 Mr. Iacovacci worked at Brevet?

12 A. As I sit here, I couldn't tell
13 you.

14 Q. Do you remember him working on
15 the sourcing side of the Brevet business?

16 A. I, I recall that was one of the
17 roles he played.

18 Q. Did he ever get involved in the
19 intermediate duration loan business or just
20 the short duration loan business?

21 A. I don't recall.

22 Q. You recall that he was involved
23 in the short duration loan business, right?

24 A. I, I would have to go back and
25 look.

1 D. MONTICCIOLO

2 Q. Okay. Would you say
3 Mr. Iacovacci was an integral member of the
4 Brevet team over the years?

5 A. I would say he was part of the
6 Brevet team.

7 Q. That's easy enough.
8 Would you say he was an
9 integral member?

10 A. I, again, would say he was part
11 of the Brevet team.

12 Q. And I, again, would say can you
13 please answer my question?

14 A. I couldn't answer that
15 question.

16 Q. Okay. Did he interact with
17 investors?

18 A. I don't recall.

19 Q. You don't recall one way or the
20 other whether Mr. Iacovacci interacted with
21 investors?

22 A. In the context of as his job --

23 Q. Yes.

24 A. -- or --

25 Q. Yeah, let me make that clear.

1 D. MONTICCIOLO

2 In the context of his job at
3 Brevet, was he interacting with investors?

4 A. So investors call people, they
5 are sometimes people you know, so
6 interacting could mean just seeing your
7 friends.

8 Q. It could. And my question to
9 you is, to your knowledge, did
10 Mr. Iacovacci interact with investors at
11 Brevet.

12 A. Everybody at Brevet interacts
13 with investors.

14 Q. What do you mean by that?

15 A. Investors talk to, you know,
16 numerous people throughout the firm.

17 Q. Do the compliance people at
18 Brevet interact with investors?

19 A. I believe they do.

20 Q. For what purpose?

21 A. Talking about
22 compliance-related stuff.

23 Q. Okay. Did Mr. Iacovacci work
24 with investors? Maybe that would narrow
25 the question down.

1 D. MONTICCIOLO

2 A. I don't know what work with
3 would mean.

4 Q. Well, is that a term you are
5 not familiar with, working?

6 A. We don't work with investors.

7 Q. Nobody at Brevet works with
8 investors?

9 A. They invest in us, we don't go
10 to work with them.

11 Q. Mr. Monticciolo, are you
12 telling me that you don't have an
13 understanding as to which of the people at
14 Brevet are designated for working with,
15 interacting with in the investors' side of
16 this business versus the many other pieces
17 of this business?

18 A. I am not saying that.

19 Q. You understand what I mean by
20 working with the investors as distinguished
21 from working with, say, the borrowers, the
22 brokers, the regulators, right?

23 A. I think you are trying to make
24 a distinction that is not accurate to the
25 business.

1 D. MONTICCIOLO

2 Q. What do you mean by that?

3 A. We are an investment manager,
4 we work for investors; they work with, talk
5 to numerous people throughout the
6 organization.

7 MR. CYRULNIK: Let's take a
8 look at an exhibit that I am going to
9 introduce. It will be marked as
10 Exhibit 2 and it's an affidavit from
11 Mr. Callahan.

12 (Whereupon, the aforementioned
13 affidavit from Mr. Callahan was
14 marked as Plaintiff(s)' Exhibit 2 for
15 identification as of this date.)

16 MR. CYRULNIK: It should pop up
17 on your list.

18 Success?

19 MS. YANG: One second.

20 MR. SOLOMON: I opened Exhibit
21 2, is it a website page?

22 MR. CYRULNIK: A website page,
23 no. It's --

24 THE WITNESS: Actually, while
25 we are looking for this, can I take

1 D. MONTICCILOLO

2 two seconds and use of the restroom
3 and be right back?

4 MR. CYRULNIK: Sure.

5 Let's go off the record.

6 THE VIDEOGRAPHER: The time is
7 1:24 and we are going off the record.
8 This is the end of media unit No. 3.

9 (Whereupon, a brief recess was
10 taken.)

11 THE VIDEOGRAPHER: The time is
12 1:31 and we are back on the record.
13 This is the beginning of media unit
14 No. 4.

15 CONTINUED EXAMINATION

16 BY MR. CYRULNIK:

17 Q. Mr. Monticciolo, were you able
18 to pull up Mr. Callahan's affirmation,
19 Exhibit 2?

20 MR. SOLOMON: It's on the
21 screen.

22 Q. If you can scroll down to
23 paragraph seven of Mr. Callahan's
24 affirmation, and you see the --

25 MR. SOLOMON: One second.

1 D. MONTICCILO

2 MR. CYRULNIK: I'm sorry.

3 MR. SOLOMON: Hold on one
4 second.

5 Paragraph seven, go ahead.

6 Q. You will see the second
7 sentence of the paragraph, Mr. Callahan
8 states, "Thus, from 2011 up to the time of
9 his termination on October 14, 2016,
10 plaintiff did not work with Brevet
11 investors," do you see that language?

12 A. Where, you are looking at
13 paragraph seven?

14 Q. I am looking at the second
15 sentence in paragraph seven, correct.

16 A. So would you just read the
17 intro to it? So I know we are looking at
18 the right thing.

19 Q. Thus, from 2011 up to the time
20 of his termination on October 14, 2016,
21 plaintiff did not work with Brevet
22 investors, do you see that?

23 A. I see that.

24 Q. You agree with Mr. Callahan's
25 statement?

1 D. MONTICCIOLO

2 A. Again, work with means like
3 really full-time working with. I see that,
4 yes.

5 Q. Well, I know you see it, do you
6 agree with Mr. Callahan's statement?

7 A. I agree with it.

8 Q. But you agree with it only if
9 you add in the words full time, did not
10 work full time with Brevet investors?

11 A. That would be a different
12 characterization of what I am saying.

13 I would say predominantly or,
14 you know, actively.

15 Or predominantly probably
16 characterizes it. We are a small firm.

17 Q. So you would disagree with the
18 statement that from 2011 to the time of his
19 termination on October 14, 2016,
20 Mr. Iacovacci did not work with Brevet
21 investors at all; is that fair?

22 MR. SOLOMON: I object to the
23 question. You are misstating the
24 document.

25 A. Right, that is not what it

1 D. MONTICCIOLO

2 says.

3 Q. And to be extraordinarily
4 clear, although it's hard to imagine that
5 it wasn't, I am not purporting to read the
6 document, I am asking you whether you would
7 agree or disagree with the statement that I
8 just made and I will make it again.

9 Would you disagree with the
10 statement that Mr. Iacovacci did not work
11 with Brevet investors at all from 2011 up
12 until the time of his termination?

13 A. I would not agree with that
14 statement.

15 Q. Okay. So to the extent
16 Mr. Callahan did not qualify his
17 representation that plaintiff Mr. Iacovacci
18 did not work with Brevet investors with any
19 other qualifications that you included, for
20 example, predominantly or full time, is it
21 fair to say that you and Mr. Callahan
22 disagree with respect to whether
23 Mr. Iacovacci worked with Brevet investors?

24 MR. SOLOMON: I object to the
25 question.

1 D. MONTICCIOLO

2 A. No.

3 Q. Sorry, did you say no,
4 Mr. Monticciolo?

5 A. I said no, I would not
6 disagree.

7 Q. Without any additional words or
8 qualifications or phrases, would you agree
9 with the statement that from 2011 until
10 2016, Mr. Iacovacci did not work with
11 Brevet investors?

12 A. Say that one more time. I'm
13 sorry.

14 Q. Without any qualifications or
15 additional phrases, would you agree or
16 disagree with the statement that from 2011
17 through 2016, Mr. Iacovacci did not work
18 with Brevet investors?

19 A. Yes. I would agree with that.

20 Q. You would agree with that,
21 without any qualifications?

22 A. I don't think I need to qualify
23 what work means.

24 Q. Okay. I think we were talking
25 about Mr. Iacovacci's role at Brevet, do

1 D. MONTICCILO

2 you recall him being predominantly involved
3 with the sourcing activities associated
4 with the Brevet short duration loan
5 business?

6 A. I recall that he was involved
7 as one of his -- one of the more important
8 roles or priority roles, you might say.

9 Q. Okay. Was he the main person
10 at Brevet that was working on sourcing
11 transactions for Brevet's short duration
12 loan funds?

13 A. I, I, I don't recall.
14 The fund's been around for a
15 long time.

16 Q. Do you recall whether there was
17 anybody else who you would have turned to
18 about sourcing other than Mr. Iacovacci
19 during the 2011 to 2016 time period?

20 A. I don't recall the specific
21 people, but yes.

22 Q. You can't identify anybody but
23 you can recall that there were other
24 people?

25 A. There has always been other

1 D. MONTICCIOLO

2 people.

3 Q. Did you interact with
4 Mr. Iacovacci on a daily basis?

5 A. I don't recall.

6 Q. Did you interact with him on a
7 weekly basis?

8 A. I don't recall.

9 Q. You don't recall whether you
10 interacted with him at least once a week on
11 average over the course of his time at
12 Brevet from 2011 to 2016?

13 A. I am not going to speculate.

14 Q. Did Mr. Iacovacci keep his time
15 in some way, record his time?

16 A. I don't know, I don't recall.

17 Q. Do you recall whether he was
18 supposed to be recording his time?

19 A. I don't recall.

20 Q. Is it fair to say you didn't
21 have any real direct oversight of
22 Mr. Iacovacci's activities at Brevet?

23 A. I -- the word oversight is kind
24 of vague.

25 Q. Well, were you his boss?

1 D. MONTICCIOLO

2 A. We were a team.

3 Q. So no?

4 A. We were a team.

5 Q. Were you anybody's boss at
6 Brevet?

7 A. You would have to ask HR.

8 Q. Oh. I may be able to ask HR,
9 but I am certainly able to ask you that
10 question, so I would like an answer,
11 please.

12 A. A boss is a phrase or role that
13 is not commonly used at Brevet.

14 Q. So you wouldn't feel
15 comfortable describing yourself as
16 anybody's boss at Brevet?

17 A. Boss without what it means, I
18 wouldn't.

19 Q. Did Mr. Iacovacci report to
20 you?

21 A. Again, I answered that
22 question. We were a team.

23 Q. Yes or no, would you feel
24 comfortable describing Mr. Iacovacci as
25 reporting to you at Brevet?

1 D. MONTICCIOLO

2 A. Again, that's not the structure
3 that I would say describes Brevet.

4 Q. Okay. Would you feel
5 comfortable describing anybody at Brevet as
6 reporting to you?

7 A. Again, it depends on the
8 context.

9 Q. Do you have any idea as to how
10 much capital Mr. Iacovacci was responsible
11 for deploying while he was at Brevet over
12 the years?

13 A. No.

14 Q. Do you have any idea how much
15 money, investment money, Mr. Iacovacci was
16 responsible for bringing into Brevet over
17 the years?

18 A. As I sit here, no.

19 Q. Would you consider
20 Mr. Iacovacci as a valued member of the
21 team?

22 A. As I sit here, it's a long time
23 ago, I don't recall.

24 Q. You don't recall whether you
25 considered Mr. Iacovacci a valued member of

1 D. MONTICCIOLO

2 the Brevet team; is that what you are
3 testifying to?

4 MR. SOLOMON: As of when?

5 MR. CYRULNIK: As of any point
6 in time.

7 A. I -- that would be speculating,
8 I can't recall.

9 Q. Do you recall there coming a
10 point in time --

11 MR. CYRULNIK: Withdrawn.

12 Q. Do you recall there coming a
13 point in time when Mr. Iacovacci got sick?

14 A. Which time?

15 Q. I take it from your answer that
16 there were multiple points in time when you
17 recall Mr. Iacovacci having health issues?

18 A. You said being sick?

19 Q. Yes.

20 A. Okay, yes.

21 Q. Do you recall him having
22 significant health issues towards the end
23 of 2015?

24 A. I recall him saying he was
25 having significant health issues.

1 D. MONTICCILO

2 Q. Should I understand from your
3 answer that you doubt whether in fact
4 Mr. Iacovacci had significant health issues
5 at the end of 2015?

6 A. I am saying I am not a doctor.

7 Q. So you don't know one way or
8 the other whether or not Mr. Iacovacci had
9 health issues but you have no reason to
10 doubt that he did; is that a fair
11 description of your testimony?

12 A. Could you repeat that?

13 Q. Sure. I am trying to just
14 understand what you are testifying to.

15 Are you saying you --

16 You recall Mr. Iacovacci
17 informing you of significant health issues
18 at the end of 2015, correct?

19 A. Significant health issues of
20 his -- I think it was his knees bothering
21 him, if that is what you mean by
22 significant health issues, yes.

23 Q. Yes, significant health issues
24 relating to his knees.

25 A. Yes.

1 D. MONTICCIOLO

2 Q. You recall him reporting that
3 he had to have surgery or surgeries in
4 connection with those health issues?

5 A. I believe he used my doctors,
6 because I have had something similar.

7 Q. Oh, that is interesting, okay.
8 So, then, do you know that he
9 had surgeries -- surgery or surgeries?

10 A. I do not.

11 Q. Okay. But you do know that he
12 used your doctors?

13 A. I don't know if he used them in
14 the end.

15 Q. You just recommended doctors to
16 him to help him with his knee issues?

17 A. As well as many other ways of
18 assisting.

19 Q. What other ways?

20 A. Offered him things that might
21 help relieve knee pain that I found worked
22 for me. Offered my crutches, my walker and
23 other things.

24 Q. Did he take you up on those
25 offers?

1 D. MONTICCIOLO

2 A. In a limited basis, yes.

3 Q. Did he borrow your crutches?

4 A. I don't recall. I don't think
5 he did.

6 Q. Did you see him in a cast?

7 A. I don't believe I did.

8 Q. Did you visit him at any
9 hospitals?

10 A. I did not.

11 Q. Did you visit him at home when
12 he wasn't able to come into the office or
13 when he told you he wasn't able to come
14 into the office?

15 A. I wasn't invited.

16 Q. Paul had a meeting with you and
17 Mark Callahan on January 6th of 2016; is
18 that right?

19 A. I don't recall specifically the
20 date.

21 Q. Do you recall having a meeting
22 in the office with Paul Iacovacci and Mark
23 Callahan towards the beginning of January
24 of 2016, even if you don't remember the
25 particular date?

1 D. MONTICCILO

2 A. I do.

3 Q. Okay. And at that meeting,
4 Mr. Iacovacci informed you and Mr. Callahan
5 of his intention to retire from Brevet; is
6 that right?

7 A. No.

8 Q. Mr. Iacovacci didn't inform you
9 that he was intending to retire?

10 A. No.

11 Q. I'm sorry, I am not sure if we
12 got that for the record, did you say no?

13 A. I said no.

14 Q. He discussed with you the topic
15 of retirement at that meeting?

16 A. He did.

17 I remember it was, it was a not
18 very coherent meeting. Maybe he was still
19 on -- I don't know the specifics, but still
20 taking opioids or something.

21 Q. Okay. Why don't you tell me
22 what you remember from that meeting.

23 A. That he said he was having
24 challenges with like the fact that his
25 knees were hurting.

1 D. MONTICCIOLO

2 Q. Okay. And what did he discuss
3 about leaving Brevet?

4 A. He didn't discuss leaving
5 Brevet. He said he might -- that this
6 might challenge him, that he would have to
7 consider retiring and permanently leaving
8 the workforce.

9 Q. And you distinguish between
10 leaving Brevet and what you just described
11 as potentially retiring?

12 A. No. Having been in the
13 business for a long time, I know the word
14 retiring means permanently leaving the
15 workforce. That's why we characterize it
16 with death and permanent disability.

17 Q. You are familiar with -- are
18 you a football fan?

19 A. I am not. Sorry.

20 Q. I take it you don't know who
21 Rob Gronkowski is?

22 A. I don't. Sorry.

23 Q. You never heard of anybody
24 retiring and yet going back to work after
25 the retirement?

1 D. MONTICCIOLO

2 A. I can't say that I know that
3 specifically or not. I can't say I have
4 experienced that.

5 Q. So, in your view, retiring
6 means never to return; is that right? To
7 the workforce.

8 A. It does. And I am sure
9 probably in every dictionary too.

10 Q. I'm sorry, did you say it does
11 and or it doesn't?

12 A. I am saying -- I'm sorry, ask
13 the question again, so I can -- please.

14 Q. Yeah, I had asked whether in
15 your view retiring means leaving the
16 workforce never to return.

17 A. It does to me. And, again, in
18 my experience, that's what it means.

19 Q. And so what did Mr. Iacovacci
20 tell you about retiring during that
21 January, early January meeting in
22 Mr. Callahan's office?

23 MR. SOLOMON: By the way,
24 Jason, I see -- I think Mr. Iacovacci
25 has joined us. I am sure you would

1 D. MONTICCIOLO

2 want to note that for the record.

3 MR. CYRULNIK: I wouldn't care
4 to, but I am more than happy for you
5 to do so, so so noted.

6 Q. Please continue.

7 A. So what I recall that he was
8 unsure and trying to figure things out.

9 Q. What --

10 A. What he should do.

11 Q. So he flagged for you that he
12 might want to retire but was unsure whether
13 he would want to retire; is that a fair?

14 (Whereupon, at 1:49 p.m., the
15 court reporter temporarily lost their
16 Internet connection and a 40-minute
17 luncheon recess was taken.)

18 THE VIDEOGRAPHER: The time is
19 2:30 and we are back on the record.

20 MR. CYRULNIK: Mr. Monticciolo,
21 you were going to answer the last
22 question, because the court had
23 gotten dropped from the room, can you
24 provide your answer to the last
25 question.

1 D. MONTICCIOLO

2 THE WITNESS: Right, just can
3 you repeat it again, just so I'm real
4 clear what I am answering?

5 (Whereupon, the referred to
6 question was read back by the
7 Reporter.)

8 A. Yes.

9 Q. Okay, what did you tell
10 Mr. Iacovacci in response to his
11 communicating that to you at the early
12 January meeting in Mr. Callahan's office?

13 A. I don't remember the exact
14 words, but it was -- it was probably along
15 the lines -- or it was along the lines of
16 or just stay in touch with us, we are here,
17 keep us posted.

18 Q. You understood that he had the
19 right to leave Brevet at the time?

20 A. Everyone has the right to leave
21 Brevet.

22 Q. Did you understand that
23 Mr. Iacovacci had the right to leave
24 Brevet?

25 A. Yes.

1 D. MONTICCIOLO

2 Q. And you understood that if he
3 left Brevet, he would have continuing
4 interests and payments that were due to him
5 under the LLC agreements?

6 A. Yes.

7 Q. Had you had anybody leave
8 Brevet previously who had continuing
9 interests or payments due to them under one
10 or more of the LLC agreements?

11 A. Yes.

12 Q. And who was that?

13 A. John Tripp.

14 MR. CYRULNIK: By the way, just
15 for the record, I am going to be
16 trying to go on mute while
17 Mr. Monticciolo is talking, because
18 the landscapers are downstairs and I
19 can imagine that it's loud, so if you
20 see me go on mute, that is the reason
21 why. Hopefully they will be done
22 soon.

23 Q. But I think you just told me it
24 was Mr. Tripp, in addition to Mr. Tripp,
25 had anybody else left Brevet with payments

1 D. MONTICCIOLO

2 due on one or more of the LLC agreements?

3 A. To be clear, when you mean LLC
4 agreements, you mean the Short Duration
5 Partners and Short Duration Holdings?

6 Q. I do.

7 A. And if you do, the answer is
8 yes.

9 Q. Who else left Brevet with
10 payments due under those agreements?

11 A. Sorry, I thought I was making
12 an affirmative that it was just John Tripp.

13 Q. Oh, okay.

14 A. It was John Tripp, sorry.

15 Q. That could be what you were
16 doing and I misremembered the question, but
17 we are clear now.

18 Do you recall how close in
19 proximity to the time that you were
20 discussing with Mr. Iacovacci his
21 prospective retirement Mr. Tripp had left
22 Brevet?

23 A. I -- best of my recollection,
24 they weren't at the same time, but they
25 were within, you know, some -- you know,

1 D. MONTICCIOLO

2 probably a couple years of each other.

3 Q. Mr. Tripp had left Brevet prior
4 to Mr. Iacovacci's discussion with you in
5 January of 2016; is that right?

6 A. I did hear the gardening guys,
7 sorry.

8 Actually, could you repeat it?

9 Q. Sure. Mr. Tripp had left
10 Brevet prior to the time that you discussed
11 in January 2016 with Mr. Iacovacci his
12 prospective retirement?

13 A. If I recall, that's correct.

14 Q. Okay. So when Mr. Iacovacci
15 flagged for you whatever he did flag for
16 you, however you want to characterize it,
17 prospective retirement, impending
18 retirement, whatever he flagged for you, do
19 you recall thinking about or talking with
20 anybody about the potential amounts that
21 Mr. -- that would be owed to Mr. Iacovacci
22 if he indeed left Brevet?

23 A. I don't recall having those
24 conversations.

25 Q. Do you recall directing anybody

1 D. MONTICCIOLO

2 to calculate roughly or to investigate what
3 the LLC agreements provided for by way of
4 payments to Mr. Iacovacci in the event that
5 he left the company?

6 A. I don't recall specifically who
7 would be doing it, but there are --
8 obviously, we have a firm and people would,
9 you know, look at the agreements.

10 Q. Do you recall anybody actually
11 doing that for you?

12 A. Doing that for me, no.

13 Q. Doing that for Brevet?

14 A. I don't recall specifically.

15 Q. Do you recall Ms. Karina
16 Dinershteyn undertaking an analysis of how
17 much would be owed to Mr. Iacovacci under
18 the LLC agreements?

19 A. Karina Dinershteyn, our CFO.

20 I do recall she does that or
21 did that on an annual basis.

22 Q. You mean that you recall that
23 she calculated everyone's -- what was owed
24 to everybody each year when she was the
25 CFO?

1 D. MONTICCIOLO

2 A. Correct.

3 Q. And my question is do you
4 recall either asking someone to ask
5 Ms. Dinershteyn or asking Ms. Dinershteyn
6 directly to undertake an analysis of what
7 would be owed to Mr. Iacovacci in the event
8 that he left Brevet in 2016?

9 A. I don't recall having a
10 conversation.

11 MR. SOLOMON: Jason, it's not
12 the outside noise, we are getting an
13 echo when you do speak. It's not the
14 outside noise at all.

15 MR. CYRULNIK: Oh. Is anyone
16 else getting an echo? I am not
17 getting an echo, I am just getting
18 outside noise.

19 THE WITNESS: Yeah, I heard it
20 in that last.

21 MR. SOLOMON: Let's carry on.

22 MR. CYRULNIK: You will let me
23 know if you hear an echo and I will
24 know whether you are hearing loud
25 blowers.

1 D. MONTICCIOLO

2 Q. Did you have a rough estimate
3 as to how much money would be owed to
4 Mr. Iacovacci if he followed through on
5 retiring from the company in 2016?

6 A. I don't recall looking at that.

7 Q. Do you recall having any
8 discussions with Mr. Callahan about the
9 potential amounts of money that
10 Mr. Iacovacci might be entitled to if he
11 followed through on a requirement in 2016?

12 A. I don't recall.

13 Q. You don't recall one way or the
14 other?

15 A. Correct.

16 Q. Do you recall expressing
17 concerns about the impact that
18 Mr. Iacovacci's departure from the company
19 might have on the business overall?

20 A. I -- as concerns, I don't
21 recall that.

22 Q. Do you recall expressing
23 concerns to anybody about Mr. Iacovacci's
24 departure potentially concerning investors
25 in Brevet?

1 D. MONTICCIOLO

2 A. No, I don't recall those
3 conversations.

4 Q. Do you recall expressing any
5 concerns to anyone about who would fill the
6 role that Mr. Iacovacci had played with
7 respect to sourcing transactions while at
8 Brevet?

9 A. Outside of the normal course
10 when anybody leaves and, if I am not
11 mistaken, I think Paul was barely, you
12 know, functioning at his job.

13 Q. Did I hear you correctly in
14 saying that Paul Iacovacci was barely
15 functioning at his job?

16 A. If I recall that it -- that his
17 performance had dropped precipitously over
18 the time period before his surgeries.

19 Q. You mean when his health
20 problems first started or were reported to
21 have started until the time that you had
22 the discussion in January of 2012 about his
23 prospective retirement, it's your
24 recollection that Mr. Iacovacci's job
25 performance had dropped in terms of

1 D. MONTICCIOLO

2 quality?

3 MR. SOLOMON: Objection.

4 A. No.

5 What I am saying is it was
6 around that time when he said he was having
7 problems that it was clear that his
8 performance had dropped substantially over
9 the year or so prior.

10 Q. And what are you referring to
11 in terms of his job performance having
12 dropped substantially?

13 A. His job was to source assets
14 and, you know, I can't give you the
15 specifics, but I recall that we were no
16 longer relying on Paul for the type of
17 business that he had been bringing in the
18 past, that it seemed to have disappeared.

19 Q. So you do recall there being a
20 time when you were relying on Paul
21 Iacovacci for a significant percentage of
22 the sourcing of business opportunities for
23 Brevet?

24 MR. SOLOMON: Object to the
25 question.

1 D. MONTICCIOLO

2 Q. Is that right?

3 A. I rely on it as much as I do my
4 shoes to keep me dry, knowing it's just
5 part of the role.

6 Q. That may be an expression that
7 I am uniquely not familiar with, but you do
8 recall there being a period of time where
9 you did rely on Mr. Iacovacci for sourcing
10 a substantial percentage of the
11 transactions that Brevet was engaging in;
12 is that a fair characterization?

13 MR. SOLOMON: Object to the
14 form.

15 A. Definitely not.

16 Q. Okay. So what did you mean to
17 say when in describing his drop in
18 performance as saying we were no longer
19 relying on him?

20 A. I didn't say that I was relying
21 on him. I said his job performance had
22 dropped precipitously and, as a team
23 member, not carrying his weight or his part
24 of the role.

25 Q. And what I am asking is can you

1 D. MONTICCIOLO

2 explain to me what you mean by his job
3 performance had dropped as a team member
4 not carrying his role? What metrics were
5 you using to --

6 A. His, his -- as you mentioned,
7 it was, he was deal sourcing and, as I
8 recall, the deal sourcing was brought to my
9 attention that it had dropped significant
10 enough for people to say, you know, is he,
11 is he doing his job.

12 Q. Who brought that to your
13 attention?

14 A. You know, I don't recall.

15 Q. So you recall somebody coming
16 and bringing -- to bring to your attention
17 that Mr. Iacovacci was no longer sourcing
18 deals but you don't recall who it was?

19 A. There is quite a few people in
20 the firm who watch how we are doing and
21 make sure that we are doing well.

22 Q. I could imagine there are.

23 In response to my question, did
24 I get that right, you recall somebody
25 reporting that to you but you don't recall

1 D. MONTICCIOLO

2 who it was?

3 A. Correct.

4 Q. Do you recall when that took
5 place?

6 A. I recall it was before he had
7 the knee problems, because I was, I was, I
8 would say, surprised that somebody was
9 having knee problems and, you know, that
10 that was, you know, interesting it was
11 occurring at the same time when performance
12 had dropped so much.

13 Q. You found that surprising that
14 somebody's performance might have dropped
15 around the same time they were having
16 health issues?

17 MR. SOLOMON: Object to the
18 question. You misstated his
19 testimony.

20 Q. Did I misstate your testimony,
21 Mr. Monticciolo?

22 A. Yes, you did.

23 Q. In what way?

24 A. In what way. I said before and
25 I would venture to say substantially

1 D. MONTICCIOLO

2 before, a year or more before and so it was
3 not while he was having them, it was
4 substantially before.

5 Q. So let me make sure I got this
6 straight, now you are remembering that
7 Mr. Iacovacci, the reports that you got
8 about Mr. Iacovacci's performance, which
9 you previously said you didn't remember
10 when that took place, other than that it
11 was prior to the knee issues, you are now
12 remembering that it was at least one year
13 prior to your hearing about Mr. Iacovacci's
14 knee problems; is that right?

15 MR. SOLOMON: Object to the
16 question. It misstated his
17 testimony.

18 A. That isn't what I said.

19 Q. Okay.

20 A. I said it was surprising to me
21 that when it became apparent that he had
22 been having job issues for quite a while
23 before it, a year or more, from what I
24 recollect, that it was convenient that
25 suddenly he was having knee problems.

1 D. MONTICCIOLO

2 Q. Well, I want to break down that
3 answer, but I am first trying to focus on
4 the year or more piece.

5 Do you or do you not have a
6 specific recollection as to when you got
7 reports of Mr. Iacovacci's job performance
8 having dropped?

9 A. I can't give you the specific
10 date.

11 Q. I would imagine that that is
12 reasonable. Can you give me the specific
13 time frame, that is month, year, whatever
14 it is you can tell me that you do
15 specifically recall, if anything?

16 A. I recall that it, it had been
17 brewing as a problem and was coming to a
18 head about the same time when he started
19 stating that he was having knee problems.

20 Q. When you say brewing as a
21 problem, do you mean that multiple
22 different sources came to report to you
23 that Mr. Iacovacci's job performance had
24 slipped?

25 A. I didn't say that.

1 D. MONTICCIOLO

2 It's easy to observe and so,
3 you know, a lack of sourcing is a lack of
4 sourcing, so you don't really need to have
5 a lot of people come and tell you.

6 Q. Is it your testimony,
7 Mr. Monticciolo, that you personally
8 observed Mr. Iacovacci's job performance
9 slipping for a lack of sourcing?

10 A. It was brought to my attention.

11 Q. By whom?

12 A. Again, I can't tell you
13 specifically who. We have a lot of
14 meetings in the firm.

15 Q. I am just trying to make sure I
16 know what you saw personally, what was
17 brought to your attention and whether I am
18 mixing up two different things.

19 So let's start with your own
20 personal observations, you didn't have any
21 personal observations with respect to
22 Mr. Iacovacci's job performance prior to
23 2016?

24 A. I didn't say that, no.

25 Q. I didn't ask you whether you

1 D. MONTICCIOLO

2 said that, I asked you whether it's
3 correct.

4 A. It's not correct.

5 Q. Okay, you did have personal
6 observations about Mr. Iacovacci's job
7 performance dropping prior to 2016?

8 A. Correct.

9 Q. Okay, what were those personal
10 observations?

11 A. Sourcing was floundering and
12 not keeping up with the expectations.

13 Q. Starting when did sourcing
14 flounder at Brevet?

15 A. It doesn't happen overnight.
16 So again, it, it felt like to me the year
17 or so before.

18 Q. It felt to you like a year or
19 so before what sourcing started
20 floundering?

21 MR. SOLOMON: I object to the
22 question. You are not even --

23 I object to the question.

24 MR. CYRULNIK: You can object
25 to the question, no problem.

1 D. MONTICCIOLO

2 Q. Go ahead, Mr. Monticciolo.

3 A. Go back to -- I was surprised
4 that Paul said he was having knee problems
5 and I -- it just struck me as interesting
6 that it was convenient when it was becoming
7 apparent that he was no longer successful
8 or being as effective, for some reason, in
9 sourcing.

10 Q. And I am happy to address a
11 couple of questions to the correlation that
12 you just drew, but I don't want to get
13 there; I want to first understand what it
14 is that you do remember and what it is that
15 you are guessing at and what it is that you
16 heard from other sources. So I don't mean
17 to make this tedious, but I am trying
18 really break apart your testimony.

19 I am focusing in the first
20 instance, Mr. Monticciolo, on your own
21 personal observations and I have heard you
22 account for one particular observation,
23 that sourcing was floundering at Brevet,
24 do -- is that right?

25 MR. SOLOMON: You keep

1 D. MONTICCIOLO

2 misstating his testimony.

3 MR. CYRULNIK: Mr. Solomon, if
4 you are going to keep on
5 characterizing how I state his
6 testimony, this deposition is
7 certainly going to go past 5:25, so I
8 am just going to ask you to object
9 and Mr. Monticciolo can handle
10 himself. If I am misstating his
11 testimony, he will let me know.

12 Right now, I am trying to
13 understand what it is he told me, so
14 I am asking him questions, not
15 stating his testimony.

16 Q. Mr. Monticciolo, do you recall
17 telling me that you had a personal
18 observation with respect to a drop-off in
19 Mr. Iacovacci's performance in the form of
20 observing that sourcing was floundering at
21 Brevet?

22 A. I said that Paul's sourcing was
23 floundering at Brevet, to clarify the last
24 part, but then yes.

25 Q. Oh, I don't think that is what

1 D. MONTICCIOLO

2 you said last time.

3 Did you just clarify that what
4 you meant to say was not that sourcing was
5 floundering at Brevet, but that Paul
6 Iacovacci's sourcing was floundering at
7 Brevet?

8 MR. SOLOMON: I object to the
9 question.

10 A. Correct, Paul was a part of
11 sourcing, so it's part and parcel the same
12 thing.

13 Q. Okay, but did you observe
14 sourcing floundering at Brevet or
15 specifically only Mr. Iacovacci's sourcing
16 floundering at Brevet?

17 A. Both.

18 Q. I don't think it possibly could
19 be both, because one of them had the word
20 only in it, but I think I know what you
21 mean. So it sounds like both were
22 occurring if you take out the word only.

23 A. One was occurring probably
24 because of the other.

25 Q. Which one was occurring because

1 D. MONTICCILO

2 of the other?

3 A. Paul's sourcing is a subset of
4 our overall sourcing, so draw your own
5 conclusions.

6 Q. Well, I am not here to draw
7 conclusions, I can do that after the
8 deposition, but you can connect the dots
9 for me.

10 Is it fair to say that you
11 observed that Mr. Iacovacci's sourcing was
12 floundering and that Brevet's sourcing was
13 floundering as a result of Mr. Iacovacci's
14 sourcing floundering?

15 A. Yes.

16 Q. Okay. How did you observe --
17 What metric did you use to
18 observe Mr. Iacovacci's sourcing
19 floundering?

20 A. Amongst the many that are
21 reported, such as deals sourced and then a
22 pyramid of how they get down to closed
23 transactions, by person sourcing. So
24 standard metrics for sourcing.

25 Q. Did you request these reports

1 D. MONTICCIOLO

2 from people about Mr. Iacovacci's numbers
3 or were they provided to you in the
4 ordinary course?

5 A. They are provided in the
6 ordinary course.

7 Q. So you got reports about
8 sourcing, you reviewed those reports and
9 you concluded, huh, Mr. Iacovacci's
10 sourcing is floundering, fair?

11 A. Fair.

12 Q. When did that take place, when
13 did you reach that conclusion?

14 A. Again, it happens over a time
15 period, because everybody has seasons,
16 sometimes they are going down, going up.
17 It just appeared that his were just going
18 down.

19 Q. I understand that it takes time
20 to reach a conclusion, my question is when
21 did you reach that conclusion?

22 A. That conclusion started to
23 become clear, from what I recall, sometime
24 before, in the probably -- it felt to be
25 not that long before he then announced he

1 D. MONTICCIOLO

2 was having knee problems.

3 Q. Okay, so you don't have a
4 particular time period that you can refer
5 me to objectively now, but you can tell me
6 that you recall reaching that conclusion
7 sometime shortly before he reported to you
8 that he was having medical issues with
9 respect to his knees, fair?

10 A. That is not what I said. And,
11 as I answered before, it surprised me that
12 there was a conversation that -- I didn't
13 say medical issues -- that he said his
14 knees were hurting.

15 Q. Okay, I don't see a difference
16 between those two. I am happy to replace
17 my question, the reference to medical
18 issues with his knees to his knees hurting
19 him; if I do that, did I fairly
20 characterize your testimony?

21 A. I'm sorry, could you repeat it?

22 Q. Oh, boy. My question was you
23 can't tell me by way of reference to any
24 month, day or year when you reached the
25 conclusion that Mr. Iacovacci's sourcing

1 D. MONTICCIOLO
2 was floundering, but you can tell me
3 relative to when Mr. Iacovacci reported
4 having knee issues that that took place
5 shortly before -- that the conclusion you
6 reached was reached shortly before
7 Mr. Iacovacci reported his knee issues; is
8 that a fair summary of what you have
9 testified to?

10 A. It's, it's not exactly what I
11 said. Because you, you are asking for
12 dates or weeks and I repeatedly have said
13 it's not that black and white of a date
14 that is suddenly is apparent, it's more of
15 a longer trend.

16 Q. Yeah, I wasn't asking for dates
17 or weeks, but that's okay.

18 Apart from the dates or weeks
19 reference that you just referred to, did I
20 accurately summarize the testimony that you
21 have given with respect to your
22 recollection?

23 MR. SOLOMON: I object to
24 the -- there is no question pending,
25 I object.

1 D. MONTICCILO

2 MR. CYRULNIK: Well, there is a
3 question pending now, I just asked
4 it.

5 MR. SOLOMON: I object.

6 A. Yeah, I am not sure I know what
7 the question is anymore.

8 Q. I tried to summarize your
9 testimony, you told me that you had some --
10 it was not exactly what you said because I
11 referenced days or weeks and I said if you
12 take out the reference to days or weeks,
13 did I accurately summarize your testimony
14 with respect to your recollection.

15 MR. SOLOMON: I object to the
16 question.

17 A. If that summary was that we
18 were seeing a trend and that trend became
19 apparent and something to discuss and that
20 was before Paul then said he had knee
21 problems, that's what I am saying. I can't
22 follow your question.

23 Q. And you don't know by way of
24 reference to a day, week or month or year
25 when that took place but you do know by way

1 D. MONTICCIOLO

2 of relative reference to when Mr. Iacovacci
3 reported to you his knee problems; is that
4 fair?

5 A. Of amongst many of the things
6 that, that were going on, obviously the
7 answer is yes.

8 Q. Okay. You have no idea when
9 Mr. Iacovacci started having knee problems,
10 do you?

11 A. I don't recall a specific day.

12 Q. Well, have no doubt that you
13 don't recall a specific day. I am asking
14 whether you have any idea or ever knew when
15 Mr. Iacovacci's knee problems started.

16 A. That it -- that I was made
17 aware of it?

18 Q. No, I am not asking you about
19 when you were made aware of it; I am asking
20 you whether you know when Mr. Iacovacci's
21 knee problems actually started.

22 A. I do not.

23 Q. Did it ever dawn on you that
24 you reached conclusions about
25 Mr. Iacovacci's job performance

1 D. MONTICCIOLO

2 deteriorating, then heard about knee
3 problems and did you ever think, huh, maybe
4 these knee problems started when the job
5 performance started deteriorating and that
6 explains what's going on, anything to that
7 effect dawn on you?

8 A. That would be surprising to me,
9 because I would have thought it seemed so
10 out of character for observations of like
11 him jogging or running and doing other
12 activities.

13 Just, again, I said it was
14 surprising to me that suddenly he had knee
15 problems. The only way it could have been
16 surprising to me was observations that it
17 wasn't a problem.

18 Q. So am I understanding your
19 testimony correctly when I ask are you
20 telling me now that the reason that you
21 were surprised that he reported knee
22 problems in the first place is because you
23 had observed him doing activities that
24 were, in your view, inconsistent with
25 having knee problems?

1 D. MONTICCIOLO

2 A. No.

3 Just when you work with someone
4 every day, one would think if somebody was
5 having knee problems of such a medical
6 nature, that it might have come up in
7 conversation.

8 Q. Did you work with Mr. Iacovacci
9 every day?

10 A. We have a very small office.

11 Q. Is that a yes?

12 A. I would say it implies a yes.
13 I can't say every day or not.

14 Q. Certainly every week?

15 A. Frequently enough to be
16 effective.

17 Q. That doesn't answer my
18 question.

19 A. I don't know.

20 Q. The reason you were surprised
21 that Mr. Iacovacci reported knee problems
22 was because based on your observations from
23 your frequent working together with him,
24 you evaluated his lack of reporting to you
25 any such problems previously and you

1 D. MONTICCIOLO

2 observed activities that you thought were
3 inconsistent with his having such issues;
4 is that fair?

5 A. No.

6 Q. I didn't get that right?

7 A. No.

8 Q. Are you a doctor,
9 Mr. Monticciolo?

10 A. No.

11 Q. Do you think you are qualified
12 to observe whether somebody is having knee
13 issues based on observing their activities?

14 A. Given I have had a more severe
15 issue, absolutely, in my view.

16 Q. Okay. So you think based on
17 the fact that you had some type of knee
18 problem that you are qualified to observe
19 whether somebody else has any other type of
20 knee problem; is that your view?

21 A. No. Not at all.

22 Q. Then why do you think you are
23 qualified to observe whether somebody had a
24 knee problem based on your own experiences?

25 A. I didn't say I was observing, I

1 D. MONTICCIOLO

2 was saying -- as I said, was one would have
3 thought he would have mentioned it or said
4 something. Or his wife or children, who I
5 frequently cross paths with as well.

6 Q. You frequently cross paths with
7 his wife and children, why is that?

8 A. Because they went to my doctor
9 and I babysat his kids while they were
10 there and Paul was not.

11 Q. His wife and kids went to your
12 doctor; is that what you said?

13 A. Correct.

14 Q. What type of doctor?

15 A. General practitioner.

16 Q. Okay. And how often did you
17 happen to have appointments at the same
18 time as one of the Iacovaccis?

19 A. It wasn't a planned event but
20 it did happen.

21 Q. More or less than ten times?

22 A. As I recall, less than ten
23 times.

24 Q. Any other occasions to interact
25 with Mr. Iacovacci's wife and children,

1 D. MONTICCIOLO

2 apart from suing them?

3 A. We have a lot of, just lot of
4 friends and a lot of relationships that all
5 know each other. At least from my
6 experience, if there was something,
7 somebody would have said something.

8 Q. Any other basis for concluding
9 that Mr. Iacovacci didn't have knee
10 problems at the time that you were
11 observing a drop in his job performance?

12 A. Not that I can recall.

13 Q. Did you have -- did your
14 compliance department have annual reviews
15 for your employees and executives?

16 A. Explain what you mean by
17 reviews.

18 Q. Well, did you have any formal
19 process for providing feedback to employees
20 or executives about their job performance
21 on a regular basis?

22 A. Over the years, we have had
23 numerous different forms of reviews.

24 Q. In 2014, '15 and '16, what were
25 those forms, as you recall?

1 D. MONTICCIOLO

2 A. I, as I sit here, I couldn't
3 tell you.

4 Q. Did you have performance review
5 meetings scheduled at least once a year?

6 A. As I said, I said I couldn't
7 tell you what we were doing in that time
8 period.

9 Q. Did you provide any written
10 feedback on an employee or executive's job
11 performance annually?

12 A. Again, as I sit here, I
13 couldn't tell you what we were doing back
14 then.

15 Q. Did you ever provide
16 Mr. Iacovacci feedback with respect to your
17 observations or conclusions about his job
18 performance having dropped or his deal
19 sourcing having floundered?

20 A. As a team, we all see each
21 other's performance and pride ourselves on
22 being able to comment and be constructive
23 to each other.

24 Q. That doesn't answer my
25 question, Mr. Monticciolo; I would ask for

1 D. MONTICCIOLO

2 a response.

3 A. So I don't recall specifically
4 but it would have been fairly obvious.

5 Q. Well, I am not asking you
6 whether it was obvious; I want to
7 understand whether or not you called
8 Mr. Iacovacci into your office or you in
9 some other way communicated to
10 Mr. Iacovacci that you or Brevet was
11 dissatisfied with his job performance in
12 2014, '15 or the beginning of 2016.

13 A. Again, as I sit here, I don't
14 recall that and -- yeah.

15 Q. Do you recall asking
16 Mr. Callahan to discuss -- in the aftermath
17 of your meeting with Mr. Iacovacci, do you
18 recall asking Mr. Callahan to have a
19 discussion with Mr. Iacovacci and report
20 back to you about Mr. Iacovacci's plans for
21 transitioning out of Brevet?

22 A. I do not.

23 MR. CYRULNIK: Let's take a
24 look at Exhibit 4.

25 (Whereupon, the aforementioned

1 D. MONTICCIOLO

2 January 12, 2016 e-mail chain was
3 marked as Plaintiff(s)' Exhibit 4 for
4 identification as of this date.)

5 MR. CYRULNIK: Do you have that
6 pulled up?

7 THE WITNESS: No, not yet.

8 MR. SOLOMON: It has Exhibit 1
9 on the front?

10 MR. CYRULNIK: Yes, Exhibit I
11 or Exhibit 1.

12 MR. SOLOMON: Oh, maybe I.
13 It's on the screen.

14 Q. If you scroll down to the
15 bottom of that exhibit, Mr. Monticciolo,
16 you will see an e-mail chain that begins
17 with Paul Iacovacci e-mailing you and
18 Mr. Callahan on January 12th, with the
19 subject line, "I wanted to follow up last
20 week's retirement discussion that we had
21 while I was in the office," do you see
22 that?

23 A. It's at the bottom of the
24 e-mail, yes.

25 Q. Do you recall receiving this

1 D. MONTICCIOLO

2 e-mail from Mr. Iacovacci?

3 A. I do not.

4 Q. Have you seen this e-mail in
5 the last few months?

6 A. Yes.

7 Q. Okay. So you are aware that
8 Mr. Iacovacci had written to you to follow
9 up on the oral discussion that you three
10 had about retirement in early January of
11 2016?

12 A. I remember that at that time,
13 he was -- Paul was very unclear about his
14 intentions. And, again, I think it was
15 probably around this time I was asking him
16 how he was doing and I don't know if he was
17 challenged with pain or opioids but it was
18 not clear to me.

19 Q. Would you agree that you had
20 had a retirement discussion the week prior
21 to this e-mail?

22 A. Absolutely not.

23 Q. Why not?

24 A. Because it was absolutely not.
25 That was not the discussion.

1 D. MONTICCIOLO

2 It was a trying to figure out
3 what to do with his life and his knees and
4 could he do what he was going to do, but
5 very uncertain.

6 Q. Well, did you respond to
7 Mr. Iacovacci's e-mail saying no clue what
8 you are talking about, what retirement
9 discussion did we have last week or
10 anything to that effect?

11 A. I don't think that would be a
12 very compassionate or partner-like thing to
13 do.

14 Q. Why is that?

15 A. Because it wouldn't be.

16 Q. You don't think it would be
17 compassionate or partner-like to clarify
18 what retirement discussion Mr. Iacovacci
19 was referring to when in your view you had
20 never had one?

21 A. As I said, he -- probably not
22 seen on this e-mail -- was in the midst of
23 saying he was in pain and having issues and
24 we wanted to be considerate of his
25 condition and understood that we are always

1 D. MONTICCIOLO

2 here to be available to him.

3 Q. So you thought it was more
4 considerate to let Mr. Iacovacci think that
5 he communicated to you that you had a
6 retirement discussion than to actually tell
7 him that you weren't going to treat that
8 discussion as a retirement discussion at
9 all and that you had no plans to facilitate
10 his retirement at this point in time?

11 A. Absolutely not.

12 MR. SOLOMON: Yeah, I object.

13 A. No.

14 If he was planning to retire,
15 he would have done what other people do,
16 speak to HR, compliance or the right
17 people.

18 Q. Well, is it your position that
19 he wasn't able to communicate his
20 retirement decision to you or to Mark
21 Callahan, who were in charge of Brevet?

22 MR. SOLOMON: Object to the
23 question.

24 A. He is intimately aware of our
25 policy and procedures, given he wrote and

1 D. MONTICCIOLO

2 approved them, of how it works.

3 Q. Are you testifying, sir, that
4 there was a policy or procedure that
5 requires an employee who is intending to
6 retire or a member who is intending to
7 leave Brevet, that they communicate with HR
8 and not yourself and Mr. Callahan?

9 A. As I sit here, I can't tell you
10 that exact policy or procedure, but this
11 was very unusual.

12 Q. Well, is there a policy or
13 procedure that you are aware of that
14 requires informing Brevet about the intents
15 to retire, informing them via HR, as
16 opposed to via yourself or Mr. Callahan?

17 MR. SOLOMON: Object to the
18 question.

19 A. As I said before, I will answer
20 the question again, there was never a
21 mention to me of his intent to retire,
22 there was discussion that he doesn't know
23 what to do and he might be retiring and,
24 again, maybe this was his painful knees or
25 opioids speaking.

1 D. MONTICCIOLO

2 Q. That wasn't my question.

3 My question was whether you are
4 aware of a policy or procedure that
5 requires a retiring employee or member to
6 go speak with HR instead of speaking with
7 you or Mr. Callahan.

8 A. Again, as I said, as I sit
9 here, I do not know if there is a specific
10 policy to that.

11 Q. Did you understand that
12 Mr. Iacovacci was interested in discussing
13 transitioning and helping Brevet transition
14 on from the role that he played to some
15 other individual who might fill that role?

16 A. What I understood was that we
17 were -- he was asking to get a transition
18 for his accounts while I believe he said
19 was going for another surgery and would be
20 out longer than expected.

21 Q. So is it your testimony that
22 Mr. Iacovacci had asked you for a leave of
23 absence?

24 A. No.

25 Q. Then I am not understanding

1 D. MONTICCIOLO

2 what you are saying.

3 What is your position as to
4 what Mr. Iacovacci had asked you for that
5 would have resulted in a discussion about
6 transition?

7 A. He was sourcing. So if he was
8 incapacitated or unavailable or maybe some
9 other distraction, it is best practices
10 and, actually, I probably believe his duty
11 to make sure that those relationships are
12 maintained and to have someone be available
13 to pick them up.

14 Q. So it's your testimony that
15 your understanding of his reference to
16 transition in this Exhibit 4 has nothing to
17 do with retiring or leaving Brevet but,
18 instead, had to do with temporarily
19 fulfilling his sourcing obligations while
20 he was out on medical -- tending to his
21 medical needs?

22 A. I am not referencing my
23 response to this Exhibit 4, because I only
24 looked at the bottom part of it, but if
25 it's related to transition, it would not be

1 D. MONTICCIOLO

2 unusual, say, for somebody going on
3 maternity leave to ask the same thing.

4 Q. I am referencing only the
5 bottom part of it, as well, when I ask you
6 about transition.

7 Do you see the words when we
8 can discuss transition in the e-mail that
9 we just read together?

10 A. Yes, I do.

11 Q. Okay. What did you understand
12 Mr. Iacovacci to be referring to when he
13 asked you about timing on when we can
14 discuss transition in the e-mail with the
15 subject line last's weeks retirement
16 discussion?

17 A. Again, as I said, it's
18 transition of the accounts to make sure
19 that we don't drop any balls, to make sure
20 that the sourcing is covered, just as you
21 would for somebody going on maternity, and
22 if he was still unsure about what he wanted
23 to do in the future, given he had told us
24 that he had more surgeries, this seemed
25 completely logical to me.

1 D. MONTICCIOLO

2 Q. What accounts -- I think you
3 used the word accounts, transitioning
4 accounts, what accounts do you have in
5 mind, Mr. Iacovacci was overseeing
6 accounts?

7 A. Well, sourcing relationships.
8 We spend a lot of money building sourcing
9 relationships that are unique that we want
10 to make sure are preserved because they are
11 proprietary to the firm.

12 Q. And to whom did you transition
13 Mr. Iacovacci's sourcing relationships in
14 response to this e-mail or discussion?

15 A. Without looking, as I sit here,
16 I couldn't tell you that.

17 Q. You have no idea?

18 A. We have quite a large firm, it
19 could have been a number of people.

20 Q. Do you recall transitioning
21 Mr. Iacovacci's sourcing relationships in
22 or about January of 2016 in response to
23 this e-mail?

24 A. Again, I am the CEO, other
25 people have been responsible for doing

1 D. MONTICCIOLO

2 that.

3 Q. I appreciate the fact that you
4 are a CEO, but I also would note that he is
5 talking to you and to Mr. Callahan, so
6 Mr. Iacovacci wanted to talk to the two of
7 you about transition, it sounds like you
8 don't think that would be an appropriate
9 thing for you to be involved in, that there
10 would be some other level employee that
11 would be more appropriately situated to
12 handle transition of sourcing
13 relationships; is that your view?

14 MR. SOLOMON: Object to the
15 question.

16 A. I think the question is not
17 exactly worded, but I would think a person
18 who does sourcing would be transitioning
19 their relationships to another sourcing
20 person.

21 Q. Did you tell him that; did you
22 respond to Mr. Iacovacci and say Paul, I
23 think you should be dealing with person X
24 or somebody from a different department,
25 not the CEO of the company, on the

1 D. MONTICCIOLO

2 temporary transition of sourcing
3 relationships?

4 A. I wouldn't think I would need
5 to tell him that, he is a seasoned
6 professional and knows that. This is a
7 role he has played in the majority of his
8 career and we had a team of people to do
9 it.

10 Q. So Mr. Iacovacci sends an
11 e-mail to the CEO of the company, asking
12 him to talk about transition, your view is
13 you are not going to be involved in that,
14 that is something that a sourcing person
15 should talk about, but you are confident
16 that Mr. Iacovacci knows that,
17 notwithstanding the fact that he sent the
18 e-mail to you and so, therefore, you don't
19 say a word to Mr. Iacovacci about the
20 appropriate people in your view he should
21 be dealing with on the transition of
22 sourcing relationships for the period of
23 time that he had in mind; is that right?

24 MR. SOLOMON: Object to the
25 question.

1 D. MONTICCIOLO

2 A. So I think the question is
3 misguided.

4 The answer is yes and that's
5 because I am the CEO, I would look for the
6 recommendation from others like Paul and
7 the other sourcing people of which Paul was
8 intimately involved with of how they would
9 do the transition and they make
10 recommendations, as I think I previously
11 answered.

12 Q. Moving ahead past January of
13 2016, when is the first time that you
14 recall concluding that Mr. Iacovacci was
15 retiring?

16 A. I don't ever think I heard him
17 say he was retiring.

18 Q. That wasn't my question.
19 When did you first reach the
20 conclusion that Mr. Iacovacci had an
21 intention to retire from Brevet?

22 A. I have never reached that
23 conclusion.

24 Q. Did you ever authorize anybody
25 to change Mr. Iacovacci's designation at

1 D. MONTICCIOLO

2 Brevet to retired?

3 A. It's a question I couldn't
4 answer, because I don't -- I am not the one
5 who makes that decision.

6 Q. I am asking whether you ever
7 did that.

8 A. I did not.

9 Q. Would you be surprised if
10 Mr. Iacovacci's designation was changed in
11 any way indicating that he was retired from
12 Brevet?

13 A. Without seeing the appropriate
14 policies, procedures and compliance process
15 being done before that or knowing it was
16 done, I would.

17 Q. Would you think there would be
18 compliance concerns that you would have as
19 a regulated entity if you were representing
20 to investors that Mr. Iacovacci had retired
21 when, in fact, he had not?

22 A. I think that that -- you know,
23 again, that question is, A, I am sure we
24 never did that, but, B, I think that is a
25 question with a million other

1 D. MONTICCIOLO

2 circumstantial facts around it.

3 Q. Why are you sure you never did
4 that, Mr. Monticciolo?

5 A. Because I am sure I never
6 acknowledged or was aware Paul was retiring
7 or retired.

8 Q. You didn't announce to the firm
9 at one of the Monday meetings that
10 Mr. Iacovacci was retiring?

11 A. No.

12 Q. Ever?

13 A. I didn't announce that he was
14 retiring. I may have announced, based on
15 this, an intention of retiring, because
16 maybe he was not around anymore and people
17 were asking questions.

18 But retirement, as maybe we did
19 with John Tripp, would have things like a
20 large party and other events that would
21 really be very visible in that event.

22 Q. I want to make sure I
23 understood the caveat there, you do recall
24 announcing that Mr. Iacovacci had expressed
25 his intention to retire?

1 D. MONTICCILO

2 A. No. Oh, intention; I said
3 considering. I am not sure if they are the
4 same thing.

5 Q. Sorry, you announced to the
6 firm that Mr. Iacovacci was considering
7 retiring; is that right?

8 A. Correct.

9 Q. And why did you do that?

10 A. Because people were asking why
11 he wasn't in the office anymore and we said
12 we were waiting to see what Paul was
13 considering to do.

14 Q. Well, why did you say that he
15 was considering retiring rather than say
16 that he was unable to perform his job
17 duties because of his situation?

18 A. That's not what I said. Those
19 are unrelated things. He could have been
20 not doing his job for a million reasons, it
21 was really our position to, you know,
22 separate different thoughts, right, of just
23 he is not there and separately announcing
24 he is considering retiring.

25 Q. Why did you think it was

1 D. MONTICCIOLO

2 important to announce at a firm-wide
3 meeting that Mr. Iacovacci was simply
4 considering he was retiring?

5 A. Because we are a small firm and
6 people noticed he wasn't in the office.

7 Q. I want to make sure I have your
8 testimony straight, are you a small firm or
9 a large firm? Because I think I have heard
10 both today.

11 A. We are a larger firm now.

12 Q. You were a small firm back in
13 2016?

14 A. We had a much smaller office
15 space.

16 Q. So Mr. Iacovacci comes to you
17 in January and tells you he was considering
18 retiring and you think that is an important
19 enough event to announce to other Brevet
20 employees that Mr. Iacovacci is considering
21 retiring rather than wait for Mr. Iacovacci
22 to make any decision and announce it then;
23 is that right?

24 A. No, that's not what I said.

25 Q. What's wrong about what I just

1 D. MONTICCIOLO

2 said?

3 A. You say I said that because of
4 this January discussion or e-mail. I said
5 it because people were questioning where he
6 is and I said he is considering retiring
7 probably amongst a number of other things.

8 Q. When did Mr. Iacovacci stop
9 coming to the office?

10 A. I have no idea.

11 Q. Was it in 2015?

12 A. I don't recall.

13 Q. Is it possible that it was?

14 A. I don't recall.

15 Q. How long after Mr. Iacovacci
16 stopped coming to the office did you
17 announce that he was considering retiring?

18 A. I don't recall.

19 Q. Best recollection?

20 A. I, honestly, I just don't
21 recall.

22 Q. Days after?

23 A. I don't recall.

24 Q. Weeks?

25 A. I don't recall.

1 D. MONTICCIOLO

2 It's the same question.

3 Q. Do you know if it took months
4 for you to announce to Brevet that
5 Mr. Iacovacci was considering retiring,
6 that is months after he had stopped coming
7 into the office?

8 A. The characterization of
9 announcing I think is a
10 mischaracterization; I was answering
11 questions in a meeting, not announcing.

12 Q. What do you mean to distinguish
13 between announcing and being in a meeting?

14 A. I think it's pretty clear.

15 Q. You may think so, but I can
16 assure you, it's not to me.

17 A. Well, then, ask more questions.

18 Q. Yeah, what do you mean to
19 distinguish between when you say it wasn't
20 an announcement, it was in a meeting?

21 Do you not make announcements
22 at meetings; is that what you mean to say?

23 A. No, we make announcements and
24 then we answer questions; those separate
25 things sometimes don't occur at the same

1 D. MONTICCIOLO

2 time or in the same meeting.

3 Q. Okay, is it your view that you
4 answered a question with respect to
5 Mr. Iacovacci at a meeting rather than make
6 an announcement?

7 A. Best of my recollection that it
8 was an announcement.

9 Q. That it was an announcement or
10 that it was not an announcement?

11 A. Sorry, was not an announcement.

12 Q. So, to the best of your
13 recollection, you were asked a question at
14 one of the Monday meetings about
15 Mr. Iacovacci and it was in response to
16 that question that you responded that he
17 was considering retiring?

18 A. That is the best of my
19 recollection.

20 Q. That took place in February of
21 2016?

22 A. I don't recall exactly when.

23 Q. Who asked you the question?

24 A. I don't recall.

25 Q. Do you recall what the question

1 D. MONTICCIOLO

2 was?

3 A. I do not recall the specifics
4 of the question.

5 Q. But you do recall that there
6 was a particular question that was asked of
7 you, to which you responded that
8 Mr. Iacovacci was considering retiring
9 publically?

10 A. I recall that there was
11 questions around one of the partners of the
12 firm not being in the office for a while.

13 Q. When you say questions, I just
14 want to make sure I am understanding you,
15 you recall somebody asking that question
16 out loud during one of the Monday meetings;
17 is that right?

18 A. I don't know the format, the
19 context, who said it, exactly how it was
20 said.

21 It would be fairly obvious in a
22 small firm if one of the four partners, I
23 think you noted, were not there.

24 Q. Did you direct Mr. Callahan to
25 tell Mr. Iacovacci that he needed to

1 D. MONTICCIOLO

2 execute a separation agreement in order to
3 leave Brevet?

4 A. I don't direct people to do
5 that.

6 Q. Sorry, what was the end of your
7 answer, you don't direct people to do what?

8 A. To do that.

9 We have departments and people
10 who handle separation and exiting.

11 Q. Is the answer to my question
12 no, you did not direct Mr. Callahan to tell
13 Mr. Iacovacci that he needed to execute a
14 separation agreement in order to leave
15 Brevet?

16 A. I don't recall conversations
17 around that topic or anything about that.

18 Q. Do you recall whether
19 Mr. Callahan ever reported to you that he
20 did inform Mr. Iacovacci that he should be
21 executing a separation agreement if he
22 intends to leave the company?

23 A. I don't recall specifics. I
24 wouldn't be surprised, it's what we do with
25 all departing employees and even a

1 D. MONTICCIOLO

2 withdrawal notice if you are withdrawing
3 from the LLCs.

4 Q. Is it your understanding that a
5 separation agreement is a required
6 mechanism for either leaving Brevet as a
7 member or as an employee?

8 A. No.

9 Q. So why would you tell
10 Mr. Iacovacci that it was?

11 A. Because you said as a member,
12 which would be incorrect?

13 Q. What do you mean by that?

14 A. As a member, you withdraw; as
15 an employee, you exit with a separation
16 agreement. I can't say if a hundred
17 percent of the time, I would be surprised
18 if it wasn't.

19 Q. Well, let's focus on the
20 withdrawal piece, you would agree with me
21 that no separation agreement is required in
22 order to withdraw from one of the LLCs,
23 correct?

24 A. There are very specific terms
25 laid out in the LLCs agreements that I

1 D. MONTICCIOLO

2 don't -- you know, sitting here now, I
3 can't recite exactly what they are.

4 Q. To the best of your knowledge,
5 is a separation agreement required for a
6 member to withdraw from one of the LLCs?

7 A. To the best of my knowledge, a
8 separation agreement is typically required
9 for exiting employees.

10 Q. And that is why I am asking
11 about withdrawing from the membership
12 interest, to the best of your knowledge is
13 a separation agreement required in order
14 for a member of one of the LLCs to
15 withdraw?

16 A. And, again, I don't recall the
17 specifics, but you don't separate from
18 LLCs, you withdraw.

19 Q. So no?

20 A. If that's your conclusion.

21 Q. I am asking to the best of your
22 knowledge is a separation agreement
23 required to withdraw from an LLC.

24 A. Again, as I sit here, without
25 reviewing them, I can't state specific

1 D. MONTICCIOLO

2 language whether the withdrawal is labeled
3 a separation agreement.

4 Q. Do you recall Mr. Tripp
5 withdrawing from one or more LLCs?

6 A. Again, I don't recall the
7 specifics; I know he did retire, we can go
8 and look at the documents and see exactly
9 how that was done.

10 Q. So, sitting here today, you
11 don't know one way or the other whether
12 Mr. Tripp withdrew from one or more LLCs?

13 A. As I sit here, I would have to
14 go look at the documents to see exactly how
15 it was done.

16 Q. And do you know whether he
17 executed a separation agreement?

18 A. Again, as I sit here, I have
19 reviewed materials, I am quite certain that
20 all employees leaving who may also be LLC
21 members do execute separation agreements in
22 the firm.

23 Q. You would never authorize
24 someone working at Brevet to remove
25 Mr. Iacovacci from the list of sourcing

1 D. MONTICCIOLO

2 people working at Brevet unless he had
3 retired from the company or otherwise left,
4 correct?

5 A. Incorrect. I don't authorize
6 those changes.

7 Q. If one came to you and asked
8 you whether Mr. Iacovacci could be removed
9 from the organizational chart, what would
10 you tell him?

11 A. What is the appropriate thing
12 to do, please check with your either
13 experience, outside counsel, regulators, et
14 cetera.

15 Q. Do you know one way or the
16 other whether Mr. Iacovacci was removed
17 from the organizational charts prior to
18 October of 2016?

19 A. As I sit here, no.

20 Q. What would you expect the
21 answer to be?

22 A. I have no idea.

23 Q. No idea. You wouldn't have any
24 expectation that Mr. Iacovacci would remain
25 on the organizational charts until after he

1 D. MONTICCIOLO

2 left the company?

3 A. I don't know how we would treat
4 somebody on an organizational chart on
5 maternity leave to the equivalent.

6 So the answer is I don't know,
7 it's not my job.

8 Q. Did you view Mr. Iacovacci as
9 on maternity leave or the equivalent
10 thereof?

11 A. It seemed similar to me.

12 Q. I assume you mean minus the
13 baby.

14 A. Hopefully.

15 Q. Yes.

16 Mr. Monticciolo, who decided to
17 terminate Mr. Iacovacci's employment?

18 A. I don't recall.

19 Q. Was it you?

20 A. I don't recall.

21 Q. You don't recall whether you
22 decided to terminate Mr. Iacovacci's
23 employment?

24 A. Again, I said I don't recall.

25 Q. Was it Mr. Callahan?

1 D. MONTICCIOLO

2 A. I don't recall.

3 Q. Do you recall being involved in
4 the decision to terminate Mr. Iacovacci's
5 employment?

6 A. I don't recall.

7 Q. Would you view that decision as
8 a momentous one?

9 A. I, I don't -- it's the first
10 time that we have had a partner with a
11 termination. So, I don't know momentous,
12 you would have to ask the compliance, HR
13 people if that is considered momentous.

14 Q. As the first time to have a
15 partner with a termination, would you be
16 surprised if that decision was made without
17 your signing off on it?

18 A. Again, the process is
19 recommendations based on experience,
20 counsel, guidance, regulatory input, the
21 right recommendation, I would question it
22 and if that was the recommendation, I would
23 either approve or deny. And I don't know
24 if it would be conjunction with multiple
25 processes on that, multiple proposals.

1 D. MONTICCIOLO

2 Q. Do you recall any of the
3 processes you just described having
4 occurred with the respect to the company's
5 decision to send Mr. Iacovacci a
6 termination letter on October 14, 2016?

7 A. I recall there was an extensive
8 process coming to that conclusion.

9 Q. Why don't you describe it to
10 me, please.

11 A. I can't give you the specifics,
12 but I know it involved an investigation by
13 our counsel of material matter, I know it
14 resulted in confirmation of material
15 matter. Those are the types of things that
16 would come to my attention, which is why it
17 sticks out in my memory.

18 Q. What was the material matter to
19 which you are referring?

20 A. Again, I don't remember the
21 specifics as I sit here, but some material
22 breach of the firm's policies, secrets, et
23 cetera, know-how.

24 Q. Well, maybe you can help me,
25 what material breach are you referring to

1 D. MONTICCIOLO

2 as the basis for Brevet's decision to
3 terminate Mr. Iacovacci on October 14th of
4 2016?

5 A. It sticks out in my mind
6 because it seemed so egregiously large and
7 clear of breaching the code of ethics, the
8 handbook, the compliance policies, all of
9 the basic things we know of being a
10 regulated entity with our trade secrets and
11 know-how leaving the firm and the firm's
12 systems.

13 Q. You have described breaches and
14 you have described, you know, various
15 documents, policies, I am asking you to
16 tell me about the conduct that you had
17 concluded Mr. Iacovacci had engaged in that
18 gave Brevet the right to terminate his
19 employment for cause, what did he do?

20 MR. SOLOMON: Asked and
21 answered.

22 A. Yes, I think I have already
23 said that, answered that question.

24 Q. If you think that, we have a
25 difference of opinion; either way, I am

1 D. MONTICCIOLO

2 going to ask you that question again,
3 respectfully, so please just provide the
4 answer.

5 MR. SOLOMON: Asked and
6 answered.

7 MR. CYRULNIK: Your objection
8 is noted, Mr. Solomon.

9 Q. Mr. Monticciolo --

10 A. Yes, actually --

11 Q. -- could you answer the
12 question?

13 A. I apologize, could you repeat
14 the question?

15 Q. I am asking you about the
16 conduct in which Mr. Iacovacci in your view
17 had engaged on which basis you sent him a
18 termination letter on October 14th of 2016.

19 A. It's not based on my view, it's
20 based on the recommendation of the people
21 inside of firm whose job it is, whether it
22 be compliance, HR.

23 I know there was an independent
24 investigation and that there were material
25 breaches of our policies, procedures which

1 D. MONTICCIOLO

2 I recall represented as being egregious.

3 Q. Okay, let's go through those.

4 I think you mentioned
5 compliance, what was the recommendation of
6 the compliance department?

7 A. I don't remember the specifics.

8 Q. I don't need the specifics if
9 you don't remember them, I would like to
10 know the general recommendation that they
11 made.

12 A. If the decision was to
13 terminate him, then it was obviously
14 sufficient and probably more than
15 sufficient, from my recollection, for
16 termination.

17 Q. Yeah, rather than sort of
18 drawing logical trees for me, if this then
19 that, I am just asking for you to give me
20 your best recollection of what actually
21 happened.

22 Do you recall the compliance
23 department making a recommendation with
24 respect to whether Mr. Iacovacci should be
25 terminated?

1 D. MONTICCIOLO

2 MR. SOLOMON: Object to the
3 question.

4 A. I don't recall who made the
5 specific recommendation.

6 Q. Okay, so you don't recall the
7 compliance department making such a
8 recommendation?

9 A. I didn't say that.

10 Q. You do recall the compliance
11 department making such a recommendation?

12 A. I said I don't recall who did
13 it.

14 Q. I know, that is why I am asking
15 you a specific question.

16 Do you recall the compliance
17 department making a recommendation to
18 terminate Mr. Iacovacci, yes or no?

19 A. No.

20 Q. Do you recall the HR department
21 making a recommendation to terminate
22 Mr. Iacovacci?

23 A. Again, it's the same answer, I
24 do not recall who made the recommendation,
25 any department.

1 D. MONTICCIOLO

2 Q. I understand that, that's why I
3 am asking you the specific question the
4 same way I did with compliance.

5 Do you recall the HR department
6 making a recommendation to terminate
7 Mr. Iacovacci?

8 MR. SOLOMON: I think the
9 record is not clear on compliance, so
10 I, therefore, object to the preamble.

11 Q. We can leave off the preamble
12 and if you could just answer my question,
13 do you recall the HR department making a
14 recommendation to terminate Mr. Iacovacci?

15 A. I do not recall that they did
16 not make that recommendation.

17 Q. That is a different question
18 that I am not going to ask you, so you
19 don't need to answer it.

20 My question is do you recall
21 the HR department making a recommendation
22 to terminate Mr. Iacovacci.

23 A. No.

24 Q. You mentioned an independent
25 investigation, who was retained to conduct

1 D. MONTICCIOLO

2 an independent investigation with respect
3 to Mr. Iacovacci?

4 A. I don't recall who specifically
5 was retained. I know that's -- I recall
6 that that is our process.

7 Q. Do you specifically recall that
8 an independent investigation was indeed
9 conducted with respect to Mr. Iacovacci
10 prior to his termination in 2016?

11 A. I recall that the
12 recommendation included that they -- that
13 it was investigated and concluded that it
14 was a material breach.

15 Q. I am asking you a specific
16 question, Mr. Monticciolo, and I am trying
17 very hard to get through as much as I can
18 here before I know your time constraints
19 kick in, so if we could try focus on the
20 questions, I would appreciate it.

21 I know you have been trying at
22 various points in time, I think right now,
23 we are straying from the questions a little
24 bit more than we need to.

25 My question is do you have a

1 D. MONTICCIOLO

2 specific recollection that an independent
3 investigation was conducted prior to Brevet
4 terminating Mr. Iacovacci in 2016, yes or
5 no?

6 MR. SOLOMON: Asked and
7 answered.

8 A. Yes.

9 Q. Okay. And what is that
10 specific recollection; yes, you recall that
11 there was an independent investigation that
12 was conducted?

13 A. Yes, that our compliance or
14 whoever made the recommendations, that it
15 was inclusive of a separate investigation.

16 Q. It was inclusive of a separate
17 investigation, did you say?

18 A. Included an investigation,
19 correct.

20 Q. Well, when you say independent
21 investigation, what do you mean to capture
22 with the word independent; did you hire a
23 third party to conduct an investigation
24 with respect to some issue pertaining to
25 Mr. Iacovacci?

1 D. MONTICCIOLO

2 A. Again, I am the CEO, I don't
3 hire the people. Did someone at Brevet
4 hire them, to the best of my recollection
5 that somebody did.

6 Q. To the best of your
7 recollection, Brevet hired a third party to
8 conduct an investigation of what?

9 A. As to whether or not there was
10 a -- I don't know, you could go check, I
11 got to look at the record and what we
12 actually did, but I think the topic is
13 related to a potential breach of our
14 policies, procedures.

15 Q. Where would I find this record?

16 A. I don't know off the top of my
17 head.

18 Q. Do you know whether you have
19 produced all of the records that were
20 provided to you by the independent
21 investigation entity?

22 A. I have no idea.

23 Q. And you don't even know who the
24 independent investigator was, right?

25 A. I didn't say that.

1 D. MONTICCIOLO

2 Q. Okay. Do you know who the
3 independent investigator was?

4 A. To the best of my recollection,
5 it was Greenberg Traurig.

6 Q. So it's your testimony that
7 you, Brevet retained Greenberg Traurig to
8 conduct an independent investigation of
9 Mr. Iacovacci's violations of policies and
10 procedures at Brevet; is that right?

11 A. No, what I said was I know my
12 team made a recommendation; who, I don't
13 know specifically and it included the fact
14 that they had used counsel Greenberg
15 Traurig as our employment counsel to do an
16 investigation of a potential material
17 breach by Paul.

18 Q. If Greenberg Traurig is your
19 employment counsel, how long have you used
20 Greenberg Traurig?

21 A. I have been using Greenberg
22 Traurig for 25 years.

23 Q. But why is it that you think
24 that they would be a qualified entity to
25 conduct an independent investigation?

1 D. MONTICCIOLO

2 A. That is a question that they
3 are independent and they are counsel.

4 Q. Have you ever been involved in
5 selecting a law firm to conduct an
6 independent investigation?

7 A. I have not myself.

8 Q. Do you know whether an entity
9 that has had long-standing counsel
10 relationship with a law firm can select
11 that law firm to be in charge of an
12 independent investigation?

13 A. Yes.

14 Q. And how do you know that?

15 A. Because, as I recall, we
16 brought in Greenberg specifically for
17 everything related to Paul.

18 Q. So your view is that it would
19 qualify as an independent investigation
20 notwithstanding the fact that you had a
21 long-standing relationship with the law
22 firm that was being asked to conduct it?

23 A. I did no business relationship
24 and no firm relationship with Greenberg
25 before that point.

1 D. MONTICCIOLO

2 Q. I'm sorry?

3 A. There was no firm relationship
4 nor personal relationship in a business
5 context. So they were not our counsel
6 until Paul's scenario, Paul's situation.

7 Q. I'm sorry, I must have
8 misunderstood, what did you testify to you
9 had a long-standing relationship for
10 25 years; can you explain what I
11 misunderstood there?

12 A. If I needed to hire employment
13 counsel or in various other areas, I knew
14 the firm and would call them.

15 Q. Had they represented you or one
16 your entities prior to 2016?

17 Greenberg Traurig, that is.

18 A. I don't -- well, we haven't had
19 any employment issues prior to that.

20 Q. So yes or no, had you, anyone
21 at Brevet, yourself included, ever used
22 Greenberg Traurig to represent them prior
23 to 2000 -- to the independent investigation
24 that was conducted in 2016?

25 A. To, as I sit here, the best of

1 D. MONTICCIOLO

2 my knowledge is no.

3 Q. Who did you use to draft your
4 transactional documents?

5 A. A variety of law firms.

6 Q. Not Greenberg Traurig?

7 A. Curtis Mallet does a lot --
8 The documents that I have seen
9 is Curtis Mallet.

10 Q. So you don't recall ever using
11 Greenberg Traurig prior to this independent
12 investigation in 2016?

13 A. Again, I would have to look, as
14 I sit here; I am not the person documenting
15 or doing the transactions.

16 Q. Is there an engagement letter
17 with Greenberg Traurig memorializing the
18 engagement for purposes of conducting an
19 independent investigation?

20 A. As I sit here, I don't know.

21 Q. Would you expect there to be
22 one?

23 A. If they were already involved
24 in the case, I don't know.

25 Q. In what case?

1 D. MONTICCIOLO

2 A. In the negotiation of Paul's
3 separation or whatever he was doing.

4 Q. If Greenberg Traurig was
5 already involved in negotiating a
6 separation agreement with Mr. Iacovacci,
7 why do you think they would be an
8 appropriate choice to conduct an
9 independent investigation into potential
10 violations of policies and procedures?

11 A. It's not my decision nor my
12 role in the firm to make those
13 determinations; I trust that the people who
14 made that made them on sound basis.

15 Q. Apart from trusting that the
16 people who made that made that on sound
17 basis, exercising your own independent
18 analysis and judgment, sitting here today
19 at deposition, under oath, can you tell me
20 whether or not you would agree that a law
21 firm that was actively engaged in
22 negotiating a separation agreement with
23 Mr. Iacovacci for several months would not
24 be an appropriate candidate in your view to
25 play the role of independent investigator

1 D. MONTICCIOLO

2 with respect to potential violations of
3 policies and procedures by that same
4 individual?

5 MR. SOLOMON: I object to the
6 question.

7 A. No.

8 Q. No what? You think they would
9 be an appropriate choice?

10 A. I don't, I don't -- it -- I
11 don't see --

12 I don't have a definitive view
13 as to whether or not they would or would
14 not be; that's why we have experts to
15 determine those things.

16 Q. You don't have a view one way
17 or the other whether or not such an entity,
18 such a law firm involved in negotiating a
19 separation agreement for months with that
20 employee wouldn't be an appropriate choice
21 for the role of independent investigator
22 with respect to conduct alleged regarding
23 that employee; did I understand you
24 correctly?

25 A. Correct.

1 D. MONTICCIOLO

2 Q. Why was an independent
3 investigation commenced?

4 A. You would have to ask my team
5 on the specifics, but the best of my
6 recollection, it rose to some type of, as I
7 mentioned, some type of egregious material
8 concern.

9 Q. I didn't follow that answer,
10 maybe you can try it again or give me some
11 more clarity.

12 A. The people whose job it is to
13 make those determinations determined that
14 it was necessary to do.

15 Q. Who made the determination,
16 Mr. Monticciolo; who are you identifying as
17 the individual or individuals who made the
18 determination to commence an independent
19 investigation into Mr. Iacovacci?

20 A. Again, as I said, that's not my
21 job, I am not aware of specifically who.

22 Q. So you don't know who made the
23 decision, you just know that the decision
24 was made, fair?

25 A. Correct.

1 D. MONTICCIOLO

2 Q. Were you involved in making the
3 decision?

4 A. Again, I don't remember who
5 made the decision, so how would I know?

6 Q. Well, you may not remember who
7 made it, I am asking whether you were
8 involved and, presumably, you would
9 remember whether you were involved in
10 making the decision. You can strike the
11 last part of my comment.

12 The question is do you recall
13 whether you were involved in any way in
14 making the decision to commence an
15 independent investigation into
16 Mr. Iacovacci in 2016?

17 A. As I sit here, I don't recall
18 that I was.

19 Q. Was it cleared with you?

20 A. As I sit here, I don't think I
21 am the right party for me to be cleared
22 with me.

23 Q. Do you know what was being
24 investigated specifically, that is what
25 violations in particular Greenberg Traurig

1 D. MONTICCIOLO

2 was asked to look at?

3 A. No.

4 Q. Did you report the findings of
5 the independent investigation to any
6 regulatory authorities or to your
7 investors?

8 A. I, as I sit here, I don't know.

9 Q. You are a regulated entity, you
10 hired a law firm to conduct an independent
11 investigation, you got their findings and
12 you didn't report those to investors or the
13 regulatory authorities; is that your
14 testimony?

15 A. It's not my job to make that
16 determination.

17 Q. Mr. Monticciolo, you understand
18 that you are CEO of the company?

19 A. Correct.

20 Q. You understand that you are
21 ultimately responsible for the decisions
22 that those who work for the company make?

23 MR. SOLOMON: I object to the
24 question.

25 Q. Do you understand that, yes or

1 D. MONTICCIOLO

2 no?

3 A. I do.

4 And I understand the
5 obligations of compliance officers and
6 legal counsel, as well.

7 Q. Did you consult with legal
8 counsel as to whether or not you were
9 permitted to not report to investors or to
10 the regulatory authorities either, one,
11 that an independent investigation had been
12 conducted or, two, what the results of that
13 independent investigation were?

14 MR. SOLOMON: Objection to the
15 question.

16 A. Again, as I sit here, that
17 would likely not be the process.

18 Q. What do you mean by that would
19 likely not be the process?

20 A. Compliance has obligations
21 beyond and above me to regulators. So does
22 the lawyers.

23 Q. I don't see how that is
24 responsive to my question. My question is
25 whether or not the results of the

1 D. MONTICCIOLO

2 investigation or the fact of the
3 investigation were reported to the
4 regulators or to investors.

5 MR. SOLOMON: That wasn't the
6 question and that is the fifth time
7 you asked that question and I object
8 to the question. That wasn't the
9 question.

10 MR. CYRULNIK: I can't imagine
11 that you actually mean fifth, but if
12 you do, I think you are wrong.

13 Q. Regardless, Mr. Monticciolo --

14 MR. SOLOMON: Can I compromise
15 on third?

16 MR. CYRULNIK: I mean, I can't
17 compromise on it, because I don't
18 think I asked that question before.
19 But I may have asked it once before,
20 so we can compromise on two, if you
21 want.

22 Q. Mr. Monticciolo.

23 A. I'm sorry, could you repeat the
24 question again?

25 Q. Sitting here today, you can't

1 D. MONTICCIOLO

2 tell me whether or not the company over
3 which you preside as CEO bothered to report
4 the fact or the results of the independent
5 investigation that it thought it needed to
6 conduct into Mr. Iacovacci in 2016; is that
7 correct?

8 MR. SOLOMON: I object to the
9 question.

10 A. That is categorically
11 incorrect.

12 Q. Sitting here today, you can
13 tell me whether or not Brevet bothered to
14 report the fact or the results of the
15 investigation into Mr. Iacovacci to either
16 its investors or regulators?

17 MR. SOLOMON: Object to the
18 question.

19 A. I think I have answered it.
20 Brevet doesn't bother to do
21 something; it has policies, procedures and
22 regulations that professional and outside
23 parties are hired to follow.

24 Q. Yes or no, did you report the
25 fact or the results of the investigation to

1 D. MONTICCIOLO

2 either your investors or to your
3 regulators?

4 MR. SOLOMON: Are we up to
5 three now?

6 MR. CYRULNIK: I think so.

7 MR. SOLOMON: Object to the
8 question.

9 A. Again, I am not the one who
10 would report that, so.

11 Q. Yes, to be clear, when I say
12 you in that question, I just mean Brevet,
13 anyone at Brevet.

14 Do you need me to re-ask the
15 question or can you answer with that
16 clarification?

17 A. I do not know or recall if the
18 firm or the compliance people or others
19 felt that it should -- rose to that
20 occasion.

21 Q. What were the results of the
22 investigation, Mr. Monticciolo?

23 A. I didn't receive the specific
24 results.

25 Q. There was no report provided to

1 D. MONTICCIOLO

2 you?

3 A. To me, that's not my job.

4 Q. Was there a report provided to
5 someone else at Brevet from the independent
6 investigators at Greenberg Traurig?

7 A. As I sit here, I couldn't tell
8 you.

9 Q. Would you expect that there
10 would be such a report when an independent
11 investigation is commissioned?

12 A. As I sit here, I don't know
13 what that process is.

14 Q. Do you know whether such a
15 report has been produced in this
16 litigation?

17 A. Again, as I sit here, I don't
18 know.

19 Q. Sitting here today, do you know
20 what the independent investigation
21 concluded?

22 A. Again, I was not the recipient
23 of the report or results.

24 Q. I get all of the caveats and
25 all of the disclaimers, I am just asking

1 D. MONTICCIOLO

2 you, siting here today, whether you know
3 what the conclusions of the investigation
4 were.

5 A. I specifically do not know what
6 the results were because I did not see them
7 myself. I know they rose to whatever
8 degree that people felt that would need to
9 be addressed.

10 Q. So you didn't bother to look at
11 the results of this independent
12 investigation, fair?

13 MR. SOLOMON: Not fair.

14 Objection.

15 MR. CYRULNIK: Lou, he doesn't
16 need your help.

17 A. Bother is not something that a
18 regulated entity does or we do. There are
19 roles and responsibilities, I don't know if
20 I was privileged to it or not.

21 Q. Did you --

22 A. I --

23 Q. I'm sorry.

24 A. They are professionals whose
25 job it is to make those determinations.

1 D. MONTICCIOLO

2 Q. Did you ask for it?

3 A. I don't recall.

4 Q. Do you recall whether somebody
5 declined to provide it to you?

6 A. I don't recall.

7 Q. Can you imagine that you would
8 have asked for it and somebody would have
9 declined to provide it to you?

10 A. I can't imagine I would ask for
11 it and I can't imagine any hypothetical why
12 somebody would provide it if I never asked
13 for it.

14 Q. How could you go ahead and sign
15 off on the termination of Mr. Iacovacci
16 without having reviewed the report or the
17 results or the conclusions of the
18 independent investigator that was hired to
19 investigate Mr. Iacovacci's conduct?

20 A. Why would I then -- why would
21 the process be to have an independent if it
22 could then be not decided by an independent
23 person?

24 Q. Is it your view that the
25 independent investigators at Greenberg

1 D. MONTICCIOLO

2 Traurig are the ones who decided to
3 terminate Mr. Iacovacci?

4 A. I have no idea.

5 Q. Is that your view, yes or no?

6 A. I, as I sit here, I have no
7 idea.

8 Q. Mr. Monticciolo, what is your
9 best answer to the question of who decided
10 to terminate Mr. Iacovacci?

11 A. Brevet decided to terminate
12 Mr. Iacovacci.

13 Q. Well, Brevet is not a person,
14 right, Mr. Monticciolo? I am asking you
15 specifically who made that decision.

16 MR. SOLOMON: Asked and
17 answered.

18 MR. CYRULNIK: Asked but not
19 answered.

20 Q. Go ahead.

21 MR. SOLOMON: This is
22 25 minutes ago you have been at this,
23 come on. I object to the question.

24 A. I think I have answered this.
25 Recommendations are made and

1 D. MONTICCIOLO

2 approved or denied. The recommendation is
3 made and, again, I believe it has merit and
4 it's professionals that are doing it and
5 they follow the proper process, then
6 whatever the action is, then it's pursued.

7 Q. Lengthy answer notwithstanding,
8 you don't know who made the recommendation,
9 you don't know who approved the
10 recommendation or who acted on the
11 recommendation; is that fair?

12 A. I didn't say that, I just don't
13 recall at this time.

14 Q. Yeah, I mean sitting here
15 today, you don't know the answer to any of
16 those three questions, right?

17 A. I am definitely not going to
18 guess on that.

19 Q. So no?

20 A. I am not going to guess.

21 Q. Okay, so sitting here today,
22 subject to your disclaimer that you don't
23 want to guess, the answer is no, you don't
24 know who made the recommendation, whether
25 the recommendation was made, who accepted

1 D. MONTICCIOLO

2 the recommendation if there was one made
3 and who acted on the recommendation if
4 there was one made, correct?

5 MR. SOLOMON: I object to the
6 question.

7 A. I can't answer that question
8 that way. I specifically do not know the
9 events and the specific people.

10 Q. Did you say you specifically --
11 you do not know the events; is that what
12 you said?

13 A. I do not remember the
14 specifics.

15 Q. And you don't know what
16 prompted the investigation, either,
17 correct?

18 A. I didn't say that.

19 Q. Do you know what prompted the
20 investigation?

21 A. As best as I recall, as I sit
22 here, was a concern during our -- in our
23 review of compliance materials that there
24 was a concern.

25 Q. There was a concern that what?

1 D. MONTICCIOLO

2 A. There was a concern that
3 something didn't seem consistent or
4 potentially was a breach of our policies
5 and procedures in the handbook.

6 Q. Do you hire an independent
7 investigation firm to conduct an
8 independent investigation anytime you
9 believe that somebody may have done
10 something inconsistent with one of your
11 policies and procedures?

12 A. It's not my decision as to when
13 to do that.

14 Q. I didn't ask you whether you --
15 again, maybe I need to clarify, by you in
16 that question, I meant Brevet.

17 Does Brevet hire a firm to
18 conduct an independent investigation
19 anytime Brevet believes that there is a
20 possibility that somebody acted in a way
21 that is inconsistent with one of the
22 policies or procedures?

23 A. I don't know the specifics, as
24 I sit here; I know that has been mentioned
25 as the process.

1 D. MONTICCIOLO

2 Q. Have you ever seen that happen
3 before?

4 A. Again, I don't -- I am not
5 involved in that part of the process. You
6 would have to look at our HR or compliance.

7 Q. I don't want to look at either
8 of those things right now, I just want to
9 get your answer to my question.

10 Have you, Doug Monticciolo,
11 ever seen an independent investigation that
12 was ordered and conducted at Brevet other
13 than the one that you have described to me
14 with respect to Mr. Iacovacci?

15 A. To be consistent, I never said
16 I saw Paul's. And I am not sure, as I sit
17 here, that I have ever seen any of them,
18 because that is not my -- that is not how
19 the process works.

20 Q. I don't want to conflate the
21 results of the investigation with the
22 investigation. You are testifying that you
23 are aware that an independent investigation
24 was conducted with respect to Mr. Iacovacci
25 in 2016, yes?

1 D. MONTICCIOLO

2 A. Again, I do not remember the
3 specifics; I do remember that there was
4 mention that that was done. I -- my memory
5 is that as part of the recommendation or
6 support was that an investigation was done.

7 Q. Okay. Then I am asking a
8 similar question, not about any findings or
9 written results, I am asking you whether or
10 not you are aware of any other independent
11 investigation that was commissioned or
12 done, commissioned by Brevet or done for
13 Brevet during your many, many years
14 overseeing the company?

15 A. As I sit here, I don't recall.

16 Q. Was an independent
17 investigation conducted with respect to
18 Fred Schlosser?

19 A. Again, as I sit here, I don't
20 recall.

21 Q. Is it possible that it was?

22 A. Again, as I said, I am not
23 going to speculate.

24 Q. Sitting here today, can you
25 identify any other independent

1 D. MONTICCIOLO

2 investigation that you are aware of that
3 has been conducted at the request of Brevet
4 since, say, 2004?

5 MR. SOLOMON: Asked and
6 answered.

7 A. As I said, I wouldn't be
8 involved in that process. So, as I sit
9 here, I don't recall.

10 Q. The independent investigation
11 you described was prompted by Mr. Callahan
12 snooping on Mr. Iacovacci's e-mails through
13 your Global Relay system, correct?

14 MR. SOLOMON: Object to the
15 question.

16 A. No.

17 Q. Are you aware that Mr. Callahan
18 snooped on Mr. Iacovacci's e-mails through
19 the Global Relay system in 2016?

20 MR. SOLOMON: Object to the
21 question.

22 A. No.

23 Q. Did Mr. Callahan discuss with
24 you prior to his doing so that he was going
25 to be searching through Mr. Iacovacci's

1 D. MONTICCIOLO

2 e-mail in the middle of 2016 on the Global
3 Relay system?

4 MR. SOLOMON: Object to the
5 question; no foundation.

6 A. No.

7 And, repeat, we don't snoop.

8 Q. Prior to my asking the
9 questions that I just asked, had you
10 ever -- had you been aware that
11 Mr. Callahan had searched through
12 Mr. Iacovacci's e-mails on the Brevet
13 Global Relay system in 2016?

14 A. Sorry, repeat the question.

15 Q. Prior to today, were you aware
16 that Mr. Callahan searched through
17 Mr. Iacovacci's e-mails on the Global Relay
18 system in the middle of 2016?

19 A. I am aware that Mr. Callahan
20 was performing quarterly compliance in
21 review of e-mails, as the firm does, that
22 may have included Paul's and that may have
23 included how this came about.

24 MR. SOLOMON: Jason, is this a
25 new topic? Can we take a two-minute

1 D. MONTICCIOLO

2 break? When you are at a new topic,
3 please.

4 MR. CYRULNIK: It's not -- I am
5 happy to take a two-minute break.
6 Why don't we go off the record.

7 THE VIDEOGRAPHER: The time is
8 3:56 and we are going off the record.
9 This is the end of media unit No. 4.

10 (Whereupon, a brief recess was
11 taken.)

12 THE VIDEOGRAPHER: The time is
13 4:03 and we are back on the record.
14 This is the beginning of media unit
15 No. 5.

16 CONTINUED EXAMINATION

17 BY MR. CYRULNIK:

18 Q. Mr. Callahan, can you identify
19 for me any action that Mr. Iacovacci
20 engaged in prior to October 14th of 2016 on
21 which basis you sent him a termination --
22 Brevet sent him a termination letter
23 terminating in his employment?

24 MR. SOLOMON: Asked and
25 answered.

1 D. MONTICCIOLO

2 A. And can I say correction? You
3 asked Mr. Callahan.

4 Q. Oh, I'm sorry.

5 MR. SOLOMON: And you said
6 Callahan.

7 MR. CYRULNIK: That's even
8 worse. I will replace it with
9 Mr. Monticciolo but, otherwise, the
10 question remains the same.

11 Q. Sitting here today, can you
12 identify any action that Mr. Iacovacci
13 undertook that on which basis you sent him
14 a termination letter, by you I mean Brevet,
15 on October 14th of 2016?

16 A. As I sit here today, I don't
17 recall the specifics.

18 Q. Did you review the termination
19 letter before it was sent out?

20 A. As I sit here, I don't recall.

21 Q. Do you know who sent and signed
22 the termination letter?

23 A. I don't recall.

24 Q. Do you remember Brevet seeking
25 to obtain evidence of potential violations

1 D. MONTICCIOLO

2 in which Mr. Iacovacci engaged after
3 sending out the termination letter in order
4 to justify his termination?

5 MR. SOLOMON: Object to the
6 question.

7 A. No.

8 Q. Were you involved in the
9 decision to have Mr. Johnny Lan log in to
10 the Dell OptiPlex computer at
11 Mr. Iacovacci's home to obtain documents
12 and communications for Brevet in the middle
13 of the night on October 17th and
14 October 18th of 2016?

15 A. I don't recall if I asked him
16 to go into our computer at Paul's home.

17 Q. Is it possible that you did?

18 A. I don't recall.

19 Q. In all candor, Mr. Monticciolo,
20 there is no chance that Mr. Lan would log
21 in to the Dell OptiPlex at Mr. Iacovacci's
22 home to download materials without first
23 making sure that that is what you wanted
24 him to do, correct?

25 A. Categorically incorrect.

1 D. MONTICCIOLO

2 It is his job to do what he
3 thinks is correct and we are a regulated
4 entity, we are also regulated by not just
5 SEC but Homeland Security and preserving
6 the record is, as everybody, particularly
7 Paul would know, is very important.

8 Q. Is it your view that Mr. Lan
9 would have done that on his own without
10 checking with you?

11 A. He is a professional, I would
12 hope he would have.

13 Q. I want to make sure I have your
14 testimony clear, yes or no, did you know
15 that Mr. Lan was going to be logging in to
16 the Dell OptiPlex computer at
17 Mr. Iacovacci's home before he did it?

18 A. Again, I don't recall.

19 Q. You don't recall either way?

20 A. Either way what?

21 Q. You don't recall either way
22 whether you knew or didn't know before he
23 did it?

24 A. Correct.

25 Q. And you don't recall either way

1 D. MONTICCIOLO

2 whether or not you authorized him to do it?

3 A. Correct.

4 Q. And, Mr. Monticciolo, were you
5 aware that Mr. Ian downloaded materials
6 from the Dell OptiPlex, from the family
7 account on the Dell OptiPlex, that is
8 materials that had nothing to do with
9 Brevet at all?

10 MR. SOLOMON: Object to the
11 question.

12 A. As I sit here, I am not aware
13 of the specifics of what he did to do his
14 job to protect the preservation of the SEC
15 materials.

16 Q. So no, you are not aware of
17 whether he actually downloaded materials
18 from the family account on that machine?

19 A. As I sit here, I don't recall.

20 Q. Do you know whether he
21 downloaded privileged communications that
22 Mr. Iacovacci was having with his counsel?

23 A. Again, as I sit here, I don't
24 recall.

25 Q. Do you know whether he

1 D. MONTICCIOLO

2 downloaded medical records of Mr. Iacovacci
3 or one of his family members when he
4 downloaded materials from the machine?

5 A. Again, as I sit here, I don't
6 recall.

7 Q. You would agree with me that
8 pictures, medical records, privileged
9 communications, none of those things are
10 things that you are obligated to keep as a
11 regulated entity under the SEC rules,
12 correct?

13 A. I can't answer that
14 specifically. We have a records
15 preservation requirement.

16 Q. Are you telling me that it's
17 your understanding, Mr. Monticciolo, that
18 you don't know one way or the other whether
19 as part of your records preservation
20 requirements from the SEC you are required
21 to preserve the medical records of
22 independent executives, family members,
23 their children's pictures or their
24 privileged communications with their
25 attorneys?

1 D. MONTICCIOLO

2 A. Again, I will repeat, our
3 requirement is preserve, not -- regardless
4 of what it is. It's on our computer.

5 Q. So it's your understanding that
6 you are indeed required to preserve all
7 documents, communications and records on a
8 machine that you, Brevet, owns regardless
9 of whether those documents, communications
10 or records concern Brevet or concern family
11 members or communications that do not
12 belong to Brevet?

13 MR. SOLOMON: I object to the
14 question.

15 A. Again, we are required to
16 preserve files on record; unclear of what
17 they would be if we are just preserving
18 them.

19 Q. Did you say unclear what they
20 would be if we were just preserving them?

21 A. Correct.
22 Our requirement is preserve the
23 record.

24 Q. I guess the question I am
25 asking you, Mr. Monticciolo, I want to

1 D. MONTICCIOLO

2 understand your understanding of the
3 record.

4 Is it your view that if a
5 Brevet employee has a file with their
6 child's medical records saved on a machine
7 that belonged to Brevet that it is Brevet's
8 obligation under the SEC rules to preserve
9 that file?

10 MR. SOLOMON: Do you know?

11 A. I have no way of knowing that.

12 Q. Well, I am asking you, sitting
13 here today, is it your view that there is
14 such an obligation. The answer would be
15 either yes, no or I don't know.

16 A. Yes, to preserve the record.

17 Q. Okay. So it's your view that
18 any communication, document or file that
19 appears on a machine that is owned by
20 Brevet, that you are required to preserve
21 those records regardless of whether they
22 have anything to do with Brevet, fair?

23 A. Not fair.

24 Clear that the policies and
25 procedures say that you should have no

1 D. MONTICCIOLO

2 guarantee of privacy and if someone put
3 non-work stuff on a work computer or used
4 work stuff on a non-Brevet computer that
5 is, as Paul would know for his entire
6 career, and as obligation as all of us know
7 who work on Wall Street that that
8 preservation is critical. How else would
9 you know if there was insider trading?

10 Q. Mr. Monticciolo, you are not
11 telling me that Mr. Lan was directed to
12 download Mr. Iacovacci's medical records or
13 privileged communications in order to
14 ensure that there was no insider trading,
15 right?

16 A. I never said that. I said
17 Mr. Lan, in his professional judgment,
18 maybe he sought outside counsel, would be
19 expected to preserve the record.

20 Q. Do you believe Mr. Lan, is it
21 your understanding that Mr. Lan sought
22 outside counsel before down -- secretly
23 downloading materials from the Dell
24 OptiPlex machine in Mr. Iacovacci's home?

25 MR. SOLOMON: I object to the

1 D. MONTICCIOLO

2 question.

3 A. The Dell OptiPlex being
4 Brevet's computer, we have policies and
5 procedures and professionals who have
6 experience; whether he sought outside
7 counsel, I have no idea.

8 I have no idea when Paul, I
9 don't know, gave in his phone. It was the
10 same thing.

11 Q. Would you expect Mr. Ian to
12 have sought outside counsel prior to
13 downloading materials from the Dell
14 OptiPlex machine in Mr. Iacovacci's home?

15 A. I have no expectation of how I
16 would do Johnny's job.

17 Q. No expectation one way or the
18 other whether or not you would consult with
19 counsel prior to logging in to a machine in
20 somebody's home?

21 A. That is not what I said.

22 I am not an IT professional in
23 this area trying to enforce preservation
24 rules.

25 Q. I am asking whether you would

1 D. MONTICCIOLO

2 have had an expectation one way or the
3 other as to whether the IT professional
4 would be consulting with counsel prior to
5 downloading materials from the computer in
6 Mr. Iacovacci's home.

7 A. Again, he is a professional, if
8 he needed to seek, you know, counsel or
9 check something to do his job, that's why
10 he is a professional to do his job.

11 Q. Sitting here today (inaudible).

12 MR. SOLOMON: You broke up.

13 MR. CYRULNIK: Did you say I
14 broke up?

15 MR. SOLOMON: Yes, we just
16 didn't hear the first part of what
17 you were saying, the first part of
18 the question, you just broke up.

19 Q. The question was, sitting here
20 today, are you aware of whether Mr. Lan
21 downloaded materials from devices other
22 than the Dell OptiPlex machine that was
23 located in Mr. Iacovacci's home?

24 A. Sitting here today, I am -- I
25 don't know either way.

1 D. MONTICCIOLO

2 Q. Would it surprise you to learn
3 that Mr. Lan downloaded materials from
4 Mr. Iacovacci's external hard drives
5 during his -- during Mr. Lan's download of
6 information from the Dell OptiPlex on the
7 night of October 17th and October 18th?

8 A. If Mr. Lan felt that that was
9 in accordance with preserving the record
10 for the SEC and even Homeland Security,
11 then I am sure he would have done what he
12 thought was the right thing to do.

13 Q. Mr. Monticciolo, is it your
14 intention to walk into court and justify
15 the download of data from Mr. Iacovacci's
16 external hard drives by saying that you
17 were doing so, Brevet was engaging in that
18 conduct because they thought the SEC
19 required them to preserve materials
20 secretly downloaded from Paul Iacovacci's
21 hard drive at home?

22 MR. SOLOMON: I object to the
23 question.

24 A. I have no idea -- if they were
25 Paul's hard drives or ours, I have no idea

1 D. MONTICCIOLO

2 what that context is; I am not the IT
3 person, I can't answer that question.

4 Q. So is the answer to my question
5 yes, that's your plan?

6 MR. SOLOMON: I object to the
7 question.

8 A. I rely on the professionals in
9 the firm to do what is required.

10 Q. Have you ever discussed with
11 the SEC or with an SEC compliance person
12 whether or not you are obligated to take
13 data from employees' homes and external
14 hard drives and preserve it in order to
15 comply with your regulations as a regulated
16 entity?

17 A. As a regulated entity, I
18 personally have not had that direct
19 discussion. I have observed several
20 insider trading cases of which I have
21 observed that that is the standard. I am
22 not saying that that is our standard nor
23 that we pursued that, but that would not
24 surprise me.

25 Q. Well, is it your standard?

1 D. MONTICCIOLO

2 A. Our standard, you would have to
3 look at our policies and procedures and
4 speak to the people whose job it is.

5 Q. Well, is it your contention
6 that Mr. Lan, everything he did was
7 consistent with Brevet's policies and
8 procedures?

9 A. I hire professionals and
10 surround them with other professionals to
11 make sure that they do their best.

12 Q. But the buck stops with you,
13 Mr. Monticciolo, right; if your
14 professional is acting at your direction,
15 hacked into somebody's computer, in
16 violation of 18 USC, you understand that
17 you are going ultimately to have some level
18 of responsibility for that misconduct,
19 right?

20 MR. SOLOMON: I object to the
21 question. That's not even a
22 question.

23 A. Again, as we said, that's -- we
24 have policies, procedures, we have
25 professionals that implements those, we

1 D. MONTICCIOLO

2 believe what we do is necessary for our
3 business.

4 Q. No, that wasn't my question.

5 My question is do you think you
6 are insulated individually as CEO of a
7 company by having other professionals do
8 various things and saying that they were
9 the ones who made those decisions or do you
10 think that you are responsible, at the end
11 of the day, for the decisions that are made
12 underneath your supervision?

13 MR. SOLOMON: I object to the
14 question.

15 A. Again, we have professionals
16 and policies and procedures, we -- I
17 believe that we do a thorough job to make
18 sure that they are in compliance. If I am
19 grossly negligent, then there is a
20 possibility, but I am not saying that I
21 believe that we are.

22 Q. Was Mr. Iacovacci --

23 MR. CYRULNIK: Withdrawn.

24 Q. Have you ever logged on to a
25 website that was unrelated to Brevet

1 D. MONTICCIOLO

2 business while you were using a computer
3 owned by Brevet?

4 A. Any website?

5 Q. Any website.

6 A. Google Maps, to find my way to
7 a hotel for a meeting.

8 Q. Okay, we can use that one. I
9 am just asking whether you have ever logged
10 on to any website with a Brevet machine
11 that didn't have anything to do with Brevet
12 business.

13 A. Well, that was with Brevet
14 business, then.

15 Q. Got it.

16 A. I don't believe there is
17 anything I do that is not with Brevet
18 business, because we are in a regulated
19 business and I have no expectation or
20 guarantee of privacy. That is what
21 everybody in the industry knows.

22 Q. So it's your sworn testimony,
23 Mr. Monticciolo, that you don't recall ever
24 doing anything with your Brevet computer,
25 including visiting a website, where that

1 D. MONTICCIOLO

2 action was unrelated to Brevet business;
3 did I get that right?

4 A. I did not say that. I said I
5 have no expectation of privacy.

6 Q. But I wasn't asking you any
7 questions about expectation of privacy. So
8 let me ask my question again.

9 Yes or no, have you ever used a
10 Brevet computer for any activities that was
11 unrelated to Brevet business?

12 A. I think virtually, as the CEO,
13 virtually all of my life is related to
14 Brevet business, so I'd find it to be
15 unlikely.

16 Q. Do you have a view as to
17 whether or not using a Brevet computer for
18 any activity other than Brevet business,
19 say, for example, visiting a news website
20 or checking personal e-mail, is a violation
21 of Brevet's policies and procedures?

22 A. I don't know the specifics, but
23 incidental use, I would expect to be
24 understandable, but consistent use, I would
25 have to go and review the policies. As I

1 D. MONTICCIOLO

2 sit here, I couldn't tell you.

3 Q. Sitting here today, you don't
4 know one way or the other whether or not an
5 employee is allowed to use their Brevet
6 computer for any personal activities under
7 the policies and procedures unrelated to
8 Brevet business?

9 A. I don't know the specifics in
10 the policies about that. It is a work
11 computer for work purposes, incidental use
12 happens, but given it's a regulated
13 business, everybody attests, they
14 understand there is no assurance or
15 guarantee of privacy and that everything
16 that is done is part of the record for our
17 business.

18 Q. You reviewed the policies and
19 procedures to prepare for today's
20 deposition, right; you remember testify to
21 that?

22 A. I, I -- as I said, I perused
23 through them.

24 Q. And did you see anything that
25 addressed the question of whether or not an

1 D. MONTICCIOLO

2 employee was allowed to use a Brevet
3 computer for any personal use?

4 A. I remember seeing something
5 that said that employees can use it for
6 incidental use, a Brevet-supplied computer,
7 a Brevet-owned computer, for incidental
8 use.

9 Q. What is your understanding of
10 incidental use?

11 A. Incidental, not consistent,
12 occasional, in a pinch necessity.

13 Q. So it's your view that under
14 the policies and procedures, Brevet
15 employees were permitted to use Brevet
16 machines for personal use provided that
17 that personal use was not consistent but
18 was instead occasional; is that fair?

19 A. No.

20 That's not what I said.

21 Q. Well, then, tell me yes or no,
22 do you think that a Brevet employee was
23 permitted to use a Brevet computer for
24 personal use if that personal use was only
25 occasional and not consistent?

1 D. MONTICCIOLO

2 A. No. I said incidental.

3 Q. I know you said incidental, but
4 then when I asked you to explain to me what
5 you meant by incidental, I think you told
6 me that it wasn't -- and I don't want to
7 get the word wrong, so you will accept my
8 apology in advance if I am getting it
9 wrong, but I think you said it wasn't
10 consistent. Either way, I am asking you
11 the question afresh.

12 My question is is it your
13 understanding, yes or no, that a Brevet
14 employee is permitted to use a Brevet
15 computer for personal use, for example,
16 sending a personal e-mail or visiting a
17 non-Brevet-business-related website
18 provided that the use happens only
19 occasionally and not frequently?

20 A. Again, as I recall our
21 policies, the best of my knowledge, it says
22 incidental use and there is no guarantee of
23 privacy.

24 Q. Can you answer my question? I
25 am not asking you about privacy, I am

1 D. MONTICCIOLO

2 asking you about acting in accordance with
3 the Brevet policies and procedures.

4 A. I don't view the definition of
5 incidental being consistent with the words
6 you used.

7 Q. Do you think occasional use is
8 incidental use?

9 A. No.

10 Q. So you think occasional use
11 would still be prohibited, occasional
12 personal use, non-Brevet business use would
13 still be prohibited by the policies and
14 procedures?

15 A. Correct.

16 That's why we provide computers
17 to people, phones to people, laptops to
18 people, so that it should only be
19 incidental.

20 Q. So what is -- what makes use
21 incidental if it's not a way of capturing
22 the frequency of that use?

23 A. I am not an English literate
24 person, but, you know, incidental seems to
25 be like there is an incident, in a pinch

1 D. MONTICCIOLO

2 you need to use it, but not to consider it
3 to rely upon or use it occasionally, as you
4 stated it.

5 MR. CYRULNIK: I am going to
6 introduce another exhibit.

7 And this is going to be marked
8 as exhibit -- I am waiting for it to
9 load up.

10 (Whereupon, the aforementioned
11 Brevet Direct Lending - Short
12 Duration Fund, L.P. and Subsidiaries
13 Consolidated Financial Statements
14 Year Ended December 31, 2016 was
15 marked as Plaintiff(s)' Exhibit 5 for
16 identification as of this date.)

17 I think we are up to Exhibit 5
18 here, hold on. Yes, Exhibit 5.

19 Do you see that?

20 THE WITNESS: Not yet.

21 MR. SOLOMON: I am not seeing
22 anything.

23 THE WITNESS: We have a circle.

24 MR. CYRULNIK: Okay.

25 MR. SOLOMON: Is that the

1 D. MONTICCIOLO

2 financial statement?

3 MR. CYRULNIK: Yes.

4 MR. SOLOMON: It's open on the
5 screen.

6 MR. CYRULNIK: Okay. I think I
7 may have downloaded -- I may have
8 uploaded the 2016 document, is that
9 what you have as Exhibit 5?

10 MR. SOLOMON: Year ending
11 December 31, '16, yes.

12 MR. CYRULNIK: All right, so my
13 apologies, if you can go back and
14 open up Exhibit 6, we will start with
15 that one and then we will go back to
16 Exhibit 5.

17 (Whereupon, the aforementioned
18 2015 Brevet Short Duration Partners,
19 LLC Profit and Loss Statement was
20 marked as Plaintiff(s)' Exhibit 6 for
21 identification as of this date.)

22 MR. CYRULNIK: Any luck?

23 MR. SOLOMON: We are back at
24 the circle. When we went out -- hold
25 on. You want Exhibit 6?

1 D. MONTICCIOLO

2 MR. CYRULNIK: Yes, we are
3 going to start with Exhibit 6, the
4 2015 Partners P&L.

5 MR. SOLOMON: It's on the
6 screen.

7 MR. CYRULNIK: All right.

8 Q. Mr. Monticciolo, do you
9 recognize Exhibit 6 as the Brevet Short
10 Duration Partners, LLC profit and loss
11 statement from 2015?

12 A. I don't specifically know this
13 statement, but -- so no.

14 Q. Okay. Do you generally
15 recognize the format of Exhibit 6 to be a
16 profit and loss statement for Partners?

17 A. I do not. This is -- I can't
18 say I recall this.

19 Q. Okay.

20 A. This format.

21 Q. Okay. Well, we are going to
22 look at it together.

23 If you take a look at the top
24 few lines, it does identify this document
25 as the Brevet Short Duration Partners, LLC

1 D. MONTICCIOLO

2 profit and loss January through
3 December 2015, right?

4 A. Yes.

5 Q. Okay. And if you take a look
6 at the first line item there that has a
7 figure next to it under income, there is an
8 SDF performance income of roughly [REDACTED]
[REDACTED], do you see that?

10 A. I do.

11 Q. And is that consistent with
12 your -- well, do you understand that to
13 mean that Brevet Short Duration Partners
14 received [REDACTED] [REDACTED] in performance
15 fees from the SDF, the short duration fund
16 would be the onshore fund, in 2015?

17 A. I can't specifically say if
18 it's the onshore fund, but it says it's the
19 SDF performance income.

20 Q. Okay. Do you recall the
21 offshore fund ever sending investment --
22 performance fees to Brevet Short Duration
23 Partners?

24 A. I do not.

25 And I notice this says

1 D. MONTICCIOLO

2 Partners, LLC at the top, so, I mean, that
3 confirms it would be the onshore.

4 Q. Okay. Does that generally
5 comport with your recollection that
6 Partners realized roughly [REDACTED] [REDACTED] in
7 fees from the onshore short duration fund
8 in 2015?

9 A. It appears that that's what it
10 reports.

11 Q. Okay. Do you know how those
12 fees were calculated, how did the short
13 duration fund calculate the [REDACTED] [REDACTED]
14 that it paid to Partners?

15 A. As I sit here, no. You would
16 have to look at the specifics.

17 Q. Do you have any general sense
18 of what formulas are used to calculate
19 those incentive fees?

20 A. As I sit here, it's, it's, you
21 know, something that finance does, so it's
22 complicated.

23 Q. Do you have any general sense
24 of what is used to calculate the fees, the
25 amount?

1 D. MONTICCIOLO

2 A. I would be guessing.

3 Q. What is your best guess?

4 MR. SOLOMON: Don't guess.

5 A. Yeah, I'm not going to guess.

6 Q. Well, I am asking for your best
7 understanding, so.

8 A. It says performance income, I
9 don't know what's being calculated into
10 that. I would have to go look and get the
11 specifics from finance to be sure.

12 Q. So finance has a breakdown of
13 how that performance income fee is
14 calculated?

15 A. I am assuming, as I sit here,
16 that this was actually produced by our
17 finance department.

18 Q. So yes?

19 A. It's more of a maybe.

20 Q. Okay.

21 A. Sorry.

22 Q. Would you expect that finance
23 has the breakdown?

24 A. I would expect that finance or
25 the accountants have the ability to produce

1 D. MONTICCIOLO

2 similar numbers of -- again, I am not
3 familiar with this statement.

4 Q. Okay. Let's take a look at --

5 Well, do you recall there being
6 a precipitous drop-off in the fees that
7 Partners received from the short duration
8 onshore fund between 2015 and 2016, the
9 year that Mr. Iacovacci left the company?

10 A. I don't recall that.

11 I don't specifically look at
12 Partners or Holdings on the -- you know, as
13 an individual thing, this P&L or anything.

14 MR. CYRULNIK: Let's take a
15 look at Exhibit 7, please.

16 (Whereupon, the aforementioned
17 2016 Brevet Short Duration Partners,
18 LLC Profit and Loss Statement was
19 marked as Plaintiff(s)' Exhibit 7 for
20 identification as of this date.)

21 MR. CYRULNIK: Are you okay
22 over there?

23 MR. SOLOMON: We are just fine,
24 thank you.

25 Exhibit 7 on the screen.

1 D. MONTICCIOLO

2 MR. CYRULNIK: I won't let
3 these blips affect my evaluation of
4 your stellar performance, Lou, on the
5 technology front, don't worry.

6 MR. SOLOMON: Expert. Expert.

7 Q. Mr. Monticciolo, I am looking
8 at the 2016 Brevet Short Duration Partners
9 profit and loss statement, do you see that,
10 as Exhibit 7?

11 A. Yes, I do.

12 Q. And this is the same setup as
13 the exhibit that we just looked at, except
14 this pertains to January through
15 December 2016 rather than 2015; do you see
16 that?

17 A. I see that.

18 Q. And would you agree with me
19 that there is a conspicuous precipitous
20 decline in the numbers that were reported
21 as short duration fund performance income
22 between 2015 and 2016, that is, instead of
23 [REDACTED] paid to Partners, only
24 [REDACTED] is reported as income paid to
25 Partners in 2016 under the performance

1 D. MONTICCIOLO

2 income line; do you see that?

3 A. Yes.

4 Q. Can you explain to me why it is
5 that the SDF performance income dropped

6 from [REDACTED] [REDACTED] [REDACTED] [REDACTED]
7 [REDACTED] year over year from 2015 to 2016?

8 A. I don't recall the specifics of
9 what happened in that year.

10 Q. Do you have any explanation
11 whatsoever as to why [REDACTED] [REDACTED] [REDACTED]
12 disappears here and this drops by roughly
13 [REDACTED] percent?

14 A. I would be guessing on it.

15 MR. SOLOMON: Don't guess.

16 Q. You have no idea?

17 A. I am not going to guess.

18 Q. If you are not going to guess,
19 you have no idea?

20 A. I don't recall.

21 Q. So, sitting here today, you do
22 not know why that number changed so
23 dramatically, correct?

24 A. Correct.

25 Q. Does that reflect to you that

1 D. MONTICCIOLO

2 the short duration fund was underperforming
3 as between 2016 relative to 2015?

4 A. I would be guessing without
5 seeing other information.

6 Q. Well, if the performance of the
7 fund didn't change, would it make any sense
8 to you whatsoever that the incentive fees
9 paid to Partners would change?

10 A. I can think of a number of
11 scenarios that that can change.

12 Q. Care to share?

13 A. I can't think of the specifics,
14 maybe the fund got smaller. Hypotheticals,
15 I am not going to guess.

16 Q. If the fund got smaller between
17 2015 and 2016, would the incentive fee
18 change?

19 A. Again, we would have to look at
20 the finance calculations and how this is
21 calculated.

22 Q. So, sitting here today, you
23 don't know the answer to that question?

24 A. Without looking at all of the
25 information, I would just be guessing.

1 D. MONTICCIOLO

2 Q. I want to understand what you
3 mean by guessing. Do you have an
4 explanation as to why this number [REDACTED]
5 [REDACTED] percent the year that Mr. Iacovacci
6 leaves Brevet?

7 A. I don't recall this regardless
8 of whether it's the year that Mr. Iacovacci
9 left.

10 Q. So no?

11 MR. SOLOMON: He said he didn't
12 recall.

13 THE WITNESS: Thank you.

14 Q. So you don't know?

15 MR. SOLOMON: I object to the
16 question.

17 A. I don't recall.

18 Q. Can you give me any explanation
19 at all as to why that number of fees that
20 are paid to Partners, the entity in which
21 Mr. Iacovacci -- one of the entities in
22 which Mr. Iacovacci holds an interest, goes
23 from [REDACTED] [REDACTED] [REDACTED]
24 [REDACTED] in just one year, can you
25 give me any explanation whatsoever as to

1 D. MONTICCIOLO

2 why that happened?

3 A. Without looking at the
4 specifics of each year, I just don't
5 recall.

6 Q. Did you know at one point and
7 you just don't recall or do you not know at
8 all?

9 A. Again, I don't recall, I need
10 to look at the specifics. There is a lot
11 of things that impact funds and things like
12 profits and loss.

13 Q. And, sitting here today, you
14 can't provide me with any explanation as to
15 why that number changed so dramatically,
16 right?

17 A. I am not going to guess as to
18 whether there was something in January to
19 December of 2016 that I could recall
20 sitting here right now.

21 Q. Well, there was something that
22 took place between January and December of
23 2016 and that is that Mr. Iacovacci left
24 the company.

25 Isn't it true, Mr. Monticciolo,

1 D. MONTICCIOLO

2 that the reason why the short duration fund
3 paid far fewer fees to Partners in 2016
4 than it did in 2015 was because you and
5 your comembers were concerned that paying
6 more money to Short Duration Partners meant
7 that Mr. Iacovacci was going to participate
8 in those and, therefore, you had every
9 incentive in the world to redirect those
10 payments to entities in which you held
11 interest and you believed Mr. Iacovacci
12 didn't?

13 MR. SOLOMON: Object to the
14 question.

15 A. Absolutely not.

16 Q. How do you say that
17 definitively but not have any explanation
18 for why the numbers changed?

19 A. Because I know we would never
20 make a decision like that.

21 Q. Out of character?

22 A. Out of fiber and the essence of
23 our firm.

24 Q. If you had artificially
25 depressed the payments that were going to

1 D. MONTICCIOLO

2 Partners, you would agree with me that that
3 would constitute a breach of fiduciary duty
4 in your view towards your comembers at the
5 Partners level, correct?

6 A. No.

7 Q. You think that would be
8 consistent with your fiduciary duties, if
9 you had artificially depressed the payments
10 that were being made to Short Duration
11 Partners, LLC?

12 A. No.

13 Q. Well, how could it be both,
14 consistent and inconsistent?

15 A. I'm sorry, I may have missed
16 the second question.

17 Q. Yeah, I just asked an open
18 ended. Would you think that --

19 Do you think that would be
20 consistent with your fiduciary duties to
21 your comembers at the Partners level?

22 A. If, if conjecturally,
23 hypothetical that is only the thing that
24 happens or something. It's a hypothetical
25 question, I can't answer that.

1 D. MONTICCIOLO

2 Q. Altering the fees that are paid
3 pay short duration fund would be something
4 that would concern the SEC, in your view,
5 correct?

6 A. I am not qualified to answer
7 that question. Especially as I sit here
8 now, no, I don't know.

9 Q. You don't know the answer to
10 that question one way or the other?

11 A. Correct.

12 Q. Did you have any discussions
13 whatsoever with anybody about wanting to
14 limit the amount of fees that the onshore
15 short duration fund would pay Partners in
16 connection with or in anyway related to
17 Mr. Iacovacci's departure from Brevet in
18 2016?

19 A. To the best of my recollection,
20 no.

21 Q. You don't recall any
22 discussions at all on this topic with
23 anybody, right?

24 A. To the best of my recollection,
25 I do not recall any conversation like that.

1 D. MONTICCIOLO

2 MR. CYRULNIK: Why don't we go
3 off the record for a moment.

4 THE VIDEOGRAPHER: The time is
5 4:39 and we are going off the record.

6 (Whereupon, an off-the-record
7 discussion was held.)

8 THE VIDEOGRAPHER: The time is
9 4:46 and we are back on the record.

10 CONTINUED EXAMINATION

11 BY MR. CYRULNIK:

12 Q. Mr. Callahan, when did you
13 first become aware that Mr. Ian had taken
14 materials from the Dell OptiPlex computer
15 in Mr. Iacovacci's home?

16 A. When would I have learned, I
17 don't know exactly when I learned of it.

18 Q. Do you know if it was within
19 days of his having done it?

20 A. I don't want to guess that it
21 was days.

22 Q. Would you say it was shortly
23 thereafter?

24 A. I would say likely.

25 Q. And did you or were you

1 D. MONTICCIOLO

2 involved with what was ultimately done with
3 the materials that were taken from the Dell
4 OptiPlex computer in Mr. Iacovacci's home?

5 MR. SOLOMON: I didn't hear the
6 question.

7 Q. Were you personally involved
8 with reviewing or maintaining the materials
9 that were taken from the Dell OptiPlex
10 computer in Mr. Iacovacci's home by
11 Mr. Lan?

12 A. No, not that I recall.

13 Q. What happened to the
14 physical --

15 MR. CYRULNIK: Withdrawn.

16 Q. What happened to those
17 materials that were taken, to your
18 knowledge; were they put on a hard drive
19 and stored? Were you involved in any way
20 with that piece of the aftermath of the
21 download of those materials?

22 A. I was not involved in that.

23 MR. CYRULNIK: If you could
24 take a look at Exhibit 9, please.

25 (Whereupon, the aforementioned

1 D. MONTICCIOLO

2 January 25, 2016 e-mail chain was
3 marked as Plaintiff(s)' Exhibit 9 for
4 identification as of this date.)

5 MR. CYRULNIK: There is no way
6 you can get credit for Doug's
7 technical prowess, Lou, so this is
8 going to require an entire new
9 examination of what role he played.

10 THE WITNESS: I am in training.

11 MR. SOLOMON: And I asked him
12 to say this just as a decoy.

13 MR. CYRULNIK: Well
14 choreographed.

15 MR. SOLOMON: Exhibit 9 is on
16 the screen.

17 Q. All right, do you recognize
18 this document, Mr. Monticciolo?

19 A. I am reading it here. I don't
20 recognize, it looks like an e-mail.

21 Q. If you scroll down, you will
22 see Mr. Lan e-mails on January 25th of
23 2016, at 3:41 p.m. -- well, sorry, scroll
24 down further, you will see that there is an
25 e-mail exchange from you to Mr. Lan on

1 D. MONTICCILO

2 January 25th, where you wrote subject line
3 "what did you learn on the PC front," do
4 you see that?

5 A. I do.

6 Q. Do you recall asking Mr. Lan
7 what he learned on the PC front?

8 A. I do not.

9 Q. Do you know whether this refers
10 to the PC that is the Dell OptiPlex
11 computer that was in Mr. Iacovacci's home
12 that you are asking about?

13 A. Let me read through this.
14 I -- drawing from Lanny's --
15 Lanny's -- Johnny Lan's first sentence is
16 Paul's old machine, I presume it does not.

17 Q. Do you know what it refers to,
18 then?

19 A. It says, "We found the drive
20 that was in Paul's old home computer."

21 Q. And what does that refer to?

22 A. Paul's old home computer drive.

23 Q. Do you remember that
24 Mr. Iacovacci had a home computer?

25 A. Yes.

1 D. MONTICCIOLO

2 Q. Okay. And is that different
3 from the Dell OptiPlex that we have been
4 talking about?

5 A. I can't answer that
6 definitively.

7 Q. Okay. Do you see Mr. Lan says
8 to you that he found or we found the drive
9 that was in Paul's old home computer. It's
10 still intact with the original files, do
11 you see that?

12 A. Correct.

13 Q. Do you recall Mr. Lan reporting
14 to you that he found a drive that was in
15 Paul's old home computer that was still
16 intact with original files?

17 A. I don't recall specifics, you
18 know, of that conversation or e-mail.

19 Q. Okay. Mr. Lan asks you what he
20 should do with the old -- with the drive
21 from Mr. Iacovacci's old home computer, do
22 you see that?

23 A. I do.

24 Q. And you told him to drop it in
25 your office, right?

1 D. MONTICCIOLO

2 A. That is what the e-mail says,
3 yes.

4 Q. Why did you tell him to drop it
5 in your office?

6 A. I am the one with the most room
7 in the office and that is where I believe
8 at the time all the old computers and stuff
9 was dumped.

10 Q. You told him to drop it in your
11 office because you thought that drive might
12 not fit in another office, like one by the
13 IT department, for example?

14 A. We were in very small space
15 with very limited space, so I think if I
16 read down here, it's the same thing I
17 believe we did with other computers.

18 Q. Do you recall how large
19 physically the drive was, how much space it
20 took up?

21 A. No.

22 Q. Would you think it would be
23 more than several square inches?

24 A. I would think it's not a space
25 question, it could be several inches, it's

1 D. MONTICCIOLO

2 a matter of just a place to put it where it
3 doesn't get lost.

4 Q. What did you do with it,
5 Mr. Monticciolo?

6 A. I have no recollection of it
7 even being in my office.

8 Q. Did you review it?

9 A. I would have no ability to
10 review a disk drive.

11 Q. You asked for the old drive to
12 be dropped off in your office and you did
13 nothing with it, as you recall?

14 A. Yes.

15 MR. CYRULNIK: All right, let's
16 take a look at the next exhibit,
17 Exhibit 10. And this is the 30(b)(6)
18 notice that we served and that we
19 referenced earlier today.

20 (Whereupon, the aforementioned
21 30(b)(6) Notice was marked as
22 Plaintiff(s)' Exhibit 10 for
23 identification as of this date.)

24 MR. CYRULNIK: Please tell me
25 when you have that up on your screen.

1 D. MONTICCIOLO

2 MR. SOLOMON: I observe that I
3 did not have to -- I did not have to
4 refresh.

5 It's on the screen.

6 THE WITNESS: We are getting
7 better.

8 MR. SOLOMON: The page one is
9 on the screen, is that what you want?

10 MR. CYRULNIK: Yeah, that's
11 fine, we can start there. Let me
12 just ask a couple of other quick
13 questions before we get to the
14 document.

15 Q. In 2014, Mr. Monticciolo, you
16 instructed Karina Dinershteyn to eliminate
17 Mr. Iacovacci's interests at the fund
18 level, do you recall that?

19 A. No.

20 Q. Do you recall having any
21 discussions with Ms. Dinershteyn about that
22 subject matter?

23 A. No.

24 Q. You don't recall there coming a
25 time when you needed to do something with

1 D. MONTICCIOLO

2 respect to your house that you thought
3 would benefit from eliminating
4 Mr. Iacovacci's interest at the fund level?

5 A. No.

6 Q. Who is Robert Nokley?

7 A. One of our sourcing business
8 relationships.

9 Q. When you say our, you mean
10 Brevet's?

11 A. Correct.

12 Q. Is it your testimony that
13 Brevet has engaged in deals with respect to
14 which Mr. Nokley served as a sourcing -- as
15 a sourcer?

16 A. I don't know if he was a
17 sourcer or principal or counterparty. It's
18 a name that's been around the firm for
19 years.

20 Q. Do you know whether Brevet has
21 ever done a transaction that involved
22 Mr. Nokley?

23 A. As I sit here, without looking,
24 I couldn't tell you.

25 Q. Where would you look to confirm

1 D. MONTICCIOLO

2 that?

3 A. I would look in the history of
4 all of the assets that we have done.

5 Q. You have like a centralized
6 database that sort of catalogs all of the
7 assets that you have done?

8 A. In sorts, yes.

9 Q. Did you say in source?

10 A. In form, yes.

11 Q. Okay. Is there a name for
12 that?

13 A. I am not the person who knows
14 the name.

15 Q. Okay. There is a name but you
16 just don't know it?

17 A. Yeah, I don't know what they
18 call it.

19 Q. Okay. You have easy access to
20 that database?

21 A. I, I don't believe I know where
22 it is.

23 Q. Is it accessible on the Brevet
24 server?

25 A. I, I would have to ask the

1 D. MONTICCIOLO

2 people who have access to those materials.

3 Q. Have you ever accessed it
4 through the Brevet server?

5 A. I don't recall over the years
6 if I have.

7 Q. Have you ever spoken with Bob
8 Nokley?

9 A. Yes.

10 Q. About how many times over the
11 years?

12 A. I don't recall.

13 Q. Would you say more or less than
14 ten?

15 A. I don't recall.

16 Q. What do you think of
17 Mr. Nokley?

18 A. I don't profess opinions of
19 people.

20 Q. Brevet many times rejected
21 deals that Mr. Nokley had proposed Brevet
22 consider; do you recall that?

23 A. I do not.

24 Q. You don't recall Mr. Nokley
25 proposing deals and Brevet turning them

1 D. MONTICCIOLO

2 down multiple times?

3 A. I would have to look to see if
4 we did that.

5 We see --

6 Q. Do you recall --

7 A. -- a lot deals.

8 Q. Sorry, I didn't mean to cut you
9 off. Finish your answer, please.

10 A. It's all right, I was done.

11 Q. You don't recall ever rejecting
12 a deal that was brought to you by
13 Mr. Nokley?

14 A. I don't recall.

15 Q. Do you recall whether
16 Mr. Nokley ever brought you a deal?

17 A. Given I have spoken to him, I
18 don't recall a specific deal, but I would
19 say yes.

20 Q. So sitting here today, you
21 don't recall whether Brevet ever did one of
22 his deals, whether Brevet ever rejected one
23 of his deals, whether Brevet did all of his
24 deals or whether Brevet rejected all of his
25 deals, fair?

1 D. MONTICCILO

2 A. Fair.

3 Q. Do you recall Mr. Iacovacci
4 once bringing you a deal that would have
5 been sourced by Mr. Nokley and you raising
6 your voice towards Mr. Iacovacci and
7 telling him not to ever bring a Nokley deal
8 to you again?

9 A. No.

10 Q. In substance, do you recall an
11 episode like that?

12 A. No.

13 Q. Do you recall ever expressing
14 the sentiment to Mr. Iacovacci that you had
15 no intention of doing any deals that
16 involves Robert Nokley?

17 A. I do not recall.

18 Q. What is the smallest deal that
19 Brevet has done, what is the smallest
20 amount of financing that Brevet has ever
21 extended to a counterparty in your
22 recollection?

23 A. We really don't have a minimum.
24 It's got to be in the few thousands.

25 Q. But you don't recall how many

1 D. MONTICCIOLO

2 thousands would have been the smallest deal
3 that you have ever done?

4 A. We do a lot of transactions,
5 no.

6 Q. So if someone came to you with
7 a deal for, say, \$50,000, is it your
8 testimony that Brevet would have diligenced
9 that deal, subject to it meeting other
10 criteria?

11 A. Yes.

12 Q. Can you tell me, sitting here
13 today, whether Brevet ever looked at --
14 diligenced a deal that was below \$50,000 in
15 financing?

16 A. Yes.

17 Q. What deal are you thinking of?

18 A. I can't give you the specific
19 name.

20 Many.

21 Q. Many deals, Brevet has
22 diligenced many deals under \$50,000?

23 A. Yes.

24 Q. And has that happened since,
25 say, 2016?

1 D. MONTICCIOLO

2 A. Since, it's --

3 Since and before.

4 Q. Yeah, I appreciate that; I am
5 focusing on period of 2000 -- say, 2016 and
6 beyond.

7 It's your testimony that Brevet
8 has diligenced deals that were less than
9 \$50,000 in financing since 2016, right?

10 A. Yes.

11 Q. Has Brevet ever entered into
12 any of those deals?

13 A. Yes.

14 Q. Sitting here today, can you
15 identify any deal that Brevet has entered
16 into since 2016 where the total financing
17 amount or total closing amount was less
18 than \$50,000?

19 A. Sitting here right now, I can't
20 give you the specifics. As I said, we do a
21 lot of deals.

22 Q. Where would you go to find that
23 information for me?

24 A. Again, I would go to the
25 origination finance, other people in the

1 D. MONTICCIOLO

2 firm.

3 Q. That they have a catalog of
4 those deals?

5 A. Yes.

6 Q. How about a \$20 deal, would
7 Brevet extend a \$20 loan or financing to a
8 counterparty?

9 A. Of financing \$20 has happened.

10 Q. What do you mean by that; you
11 are saying Brevet has done a deal for where
12 the total amount that was requested and
13 expended was a \$20 financing?

14 A. Yes.

15 Q. What was that deal?

16 A. I don't recall the specific
17 deal.

18 Q. But why would Brevet, a
19 sophisticated, regulated hedge fund, extend
20 a \$20 loan to another entity without any
21 other amounts anticipated?

22 A. Probably because it was related
23 to a deal that was already funded and it
24 was an additional funding, maybe to
25 reimburse a water fee or to fund a water

1 D. MONTICCIOLO

2 fee.

3 Q. Well, thanks for clarifying.

4 So Brevet wouldn't engage in a
5 transaction that was in total a \$20
6 financing, it would only do so if it was
7 part of a larger transaction that had much
8 greater numbers; is that a fair account of
9 your testimony?

10 A. For \$20, yes.

11 Q. Okay. Who is Michael
12 Szymanski?

13 A. He is a consultant in the hedge
14 fund industry.

15 Q. Did you hire Mr. Szymanski as a
16 consultant with the hope of having him take
17 over the role of Brevet's COO?

18 A. No.

19 I hired him to review our --
20 look at our systems and technology.

21 Q. Okay. And did Mr. Szymanski,
22 in fact, conduct an assessment of Brevet's
23 operational and compliance issues when he
24 came to Brevet?

25 A. Unfortunately, we exited our

1 D. MONTICCIOLO

2 relationship -- terminated our relationship
3 with Mr. Szymanski early.

4 Q. So did you terminate your
5 relationship with Mr. Szymanski prior to
6 his conducting an assessment of Brevet's
7 operational and compliance issues?

8 A. I believe he had not even begun
9 to complete or formulate that assessment.

10 Q. Well, setting aside whether he
11 completed it, did he provide you with an
12 assessment, even in preliminary form, of
13 Brevet's operational and compliance issues?

14 A. I don't recall. He wasn't
15 there that long.

16 Q. Do you recall any of his
17 conclusions?

18 MR. SOLOMON: Object to form.

19 A. I do not.

20 Q. Did he make any recommendations
21 to you?

22 A. I don't recall.

23 Q. You don't recall whether he
24 made any recommendations to you,
25 Mr. Monticciolo?

1 D. MONTICCIOLO

2 A. Correct.

3 Q. Did he raise any concerns about
4 Brevet's operational and compliance issues
5 with respect to its obligations under the
6 SEC rules?

7 A. I don't recall.

8 Q. Do you recall terminating the
9 engagement early, as you described
10 previously, because he expressed concerns
11 to you about Brevet's offering documents?

12 A. I very clearly recall
13 terminating him because he had engaged a
14 third party without following our policies
15 and procedures and without our authority.

16 Q. So you don't recall any
17 concerns he raised to you about Brevet's
18 offering documents?

19 A. I don't recall that.

20 Q. How about its investor decks?

21 A. I don't recall that.

22 Q. Did he raise concerns to you
23 about any other representations that Brevet
24 was making to investors?

25 A. I don't recall.

1 D. MONTICCIOLO

2 Q. It's fair to say that you an
3 Mr. Szymanski had gotten into several
4 heated discussions?

5 A. Yes. Over almost committing
6 the firm through a third party we hadn't
7 agreed to, yes.

8 Q. How soon after hiring
9 Mr. Szymanski to conduct the review do you
10 recall his being terminated or being asked
11 to leave Brevet?

12 A. I don't recall.

13 Q. Was he looking at Brevet's
14 compliance with retentions of records, for
15 example?

16 A. I don't recall. Not that I am
17 aware of.

18 Q. Given the time left, let's take
19 a look at the exhibit.

20 First topic, which you can find
21 on page 6 of the exhibit.

22 I am going to ask you -- you
23 can read that and tell me when you are
24 ready, I am going to ask you a question or
25 two on that to topic.

1 D. MONTICCIOLO

2 A. And where specifically?

3 MR. SOLOMON: Page six, under
4 topics is up.

5 Q. Do you see topic one,
6 identification of each of defendants'
7 claimed trade secrets?

8 A. Identification of each of
9 defendants' claimed trade secrets, okay.

10 Q. Okay.

11 A. Read this.

12 How much are you going to
13 reference?

14 Q. Yes, I will ask you the
15 question; if you need to read anything, you
16 let me know. Are you ready?

17 A. Just one second. Sorry.

18 I read the first paragraph
19 there.

20 Q. Okay. So I am going to ask you
21 to identify each of the trades secrets you
22 claim, and by you I mean Brevet, and the
23 defendants in this litigation claim that
24 Mr. Iacovacci misappropriated, but to make
25 things a little easier going forward and

1 D. MONTICCIOLO

2 more efficient, given the time, I am going
3 to ask you to place them into one or the
4 other of two categories.

5 Category one is trade secrets
6 for which you have identified some harm to
7 Brevet from the alleged misappropriation
8 and category two is trade secrets for which
9 you have not been able to identify to
10 Brevet from the alleged misappropriation,
11 okay?

12 A. Okay.

13 Q. Okay. So let's start, can you
14 identify the trade secrets that you claim
15 Mr. Iacovacci has misappropriated by way of
16 reference to the two categories that I just
17 asked you to place them into?

18 A. So the first one was identified
19 damage, the second one is not yet
20 identified damage, correct?

21 Q. Yes. The first one would be
22 trade secrets for which you have identified
23 some damage to the Brevet from the alleged
24 misappropriation.

25 A. And we are going to do this

1 D. MONTICCIOLO

2 before 5:30, okay.

3 Q. We are going to do our best.

4 A. Okay. So, first, is all of our
5 investor lists, our sourcing clients.

6 Q. Is that one thing, investor
7 lists, sourcing clients, or is that two
8 things?

9 A. Those are two things.

10 Q. Okay.

11 A. Our unique materials, our
12 formats, our track record.

13 Q. I just want to make sure I have
14 the categories, Mr. Monticciolo.

15 So I have all investors lists;
16 all sourcing clients, that is number two;
17 number three, unique -- and I can't even
18 read my own writing, unique what?

19 A. Our presentation materials.

20 Q. Presentation materials.

21 And then you said something
22 about formats, the formats of your
23 presentation materials?

24 A. The format, the content, work
25 product that we had numerous third parties

1 D. MONTICCILO

2 and internal people work on.

3 Q. Okay, anything else?

4 A. The track record.

5 The valuation methodologies,
6 our principles and policies.

7 Q. Is that one thing or three
8 things?

9 A. Those are two separate things.

10 Q. Valuation methodologies is one
11 and then the next one is your principles
12 and methodologies?

13 A. Uh-huh.

14 MR. SOLOMON: Principles and
15 policies.

16 A. I'm sorry, principles and
17 procedures.

18 Q. Okay.

19 A. Our deal sourcing strategy and
20 process.

21 Q. Okay.

22 A. Brevet's underwriting
23 documentation, closing transaction
24 policies.

25 Q. Is that one thing or three

1 D. MONTICCILO

2 things or two things?

3 A. We can make that one.

4 Q. Underwriting documentation,
5 closing and what?

6 A. Transaction policies.

7 Our fund structure.

8 And all -- I want to be clear,
9 and all of the related documents that that
10 encompasses; which, for time, we can just
11 encompass it as fund structure.

12 Our tax strategy.

13 Q. Okay.

14 A. Our tax opinion.

15 Q. Your tax opinion, you said?

16 A. Correct.

17 Q. What tax opinion?

18 A. We have a tax opinion for the
19 fund.

20 Q. That Mr. Iacovacci has
21 misappropriated?

22 A. I believe I have been informed
23 that he copied that, took it out of the
24 premises of Brevet. Without written
25 permission.

1 D. MONTICCILO

2 Q. Anything else?

3 A. Our professionals or methods we
4 use for recovering or producing the
5 performance we have on our assets.

6 Q. Sorry, did you say
7 professionals?

8 A. The professionals and how we
9 use them to achieve the performance that we
10 do on our assets.

11 Q. That's one thing, that is one
12 trade secret, your professionals and how
13 you use them?

14 A. It's a category or group of
15 stuff.

16 Q. Professionals and how we use
17 them for what?

18 A. For recovering performing on
19 our assets. Our investments.

20 Q. Okay.

21 A. Our documents on our loans.

22 Q. Okay.

23 A. Our sourcing strategy and
24 structure.

25 Q. Is that different from number

1 D. MONTICCIOLO

2 seven, deal sourcing strategy and process?

3 A. Yes.

4 Q. What is the difference between
5 category sixteen and category seven?

6 A. The first one is once you have
7 the asset and move it through and the
8 second one is how do you even identify
9 where to get the asset and through what
10 mechanisms you get it to up number seven.

11 Q. Okay.

12 A. Our regulatory framework.

13 That includes SEC, Homeland
14 Security.

15 Our various board structures,
16 including our independent conflicts board,
17 and how they operate.

18 Q. Okay.

19 A. You want me to keep going?

20 Q. I want you to give me a
21 complete list, so if there is more on the
22 list.

23 A. Okay. How we --

24 Q. Let me ask you a question, are
25 you reading from something or this is just

1 D. MONTICCIOLO

2 off?

3 A. This is the essence of our
4 firm. It's why we are unique.

5 MR. SOLOMON: I'm sorry, he
6 asked if you are reading from
7 something.

8 A. No, I'm not reading from
9 something.

10 MR. SOLOMON: Because he can't
11 see, because we are not --

12 A. No, no, no.

13 MR. SOLOMON: He is not reading
14 from anything.

15 A. This is --

16 Q. Unless you can provide me with
17 a document, I am going to need you to just
18 answer the question orally, so the answer
19 is yes. I mean, if there is more --

20 A. I am not reading from
21 something. Yes, sorry.

22 So the legal structure that we
23 use to originate those assets in the
24 various ways, the various mechanisms and
25 vehicles, entities we use to do that.

1 D. MONTICCIOLO

2 Q. Those are trade secrets too, in
3 your view?

4 A. Oh, definitively.

5 Q. Okay.

6 A. The methods we use to create
7 competitive barriers in our investment
8 strategy is one category, in our asset an
9 origination, sourcing. Keep it simple,
10 sourcing. And our operations of how we
11 keep it unique.

12 Q. Anything else?

13 A. Which third parties we use for
14 the management and administration of the
15 fund. And how they are engaged and their
16 roles.

17 The technology that we use to
18 keep all of our trade secrets secure and
19 secret, protected, how we use them.

20 Our cyber security framework.
21 Our compliance procedures. And our
22 corporate structure.

23 Q. Okay, did I get everything
24 here?

25 A. I think that is sufficient.

1 D. MONTICCILOLO

2 Q. Mr. Monticciolo, it's fair to
3 say you are not a trade secrets lawyer?

4 A. What was that again?

5 Q. Is it fair to say you are not a
6 trade secrets lawyer?

7 A. I am not myself, but we are one
8 of the largest people involved in things
9 like intellectual property.

10 Q. Okay. It's your contention, is
11 it not, that each of the -- and I counted
12 26 -- categories of things that you just
13 identified in your view is a trade secret
14 that is owned by Brevet, correct?

15 A. Correct.

16 Q. And it's your view that
17 Mr. Iacovacci misappropriated each and
18 every one of the 26 categories of trade
19 secrets that you claimed to have identified
20 in response to my last question?

21 A. From what I have been made
22 aware, yes.

23 Q. Who told you that?

24 A. In the materials I have seen
25 produced in the case.

1 D. MONTICCIOLO

2 Q. The materials you have seen
3 produced in the case, what types of
4 materials are you referring to when you say
5 that?

6 A. The, the --

7 THE WITNESS: (Inaudible.)

8 Interrogatory, thank you.

9 A. The interrogatory. Sorry.

10 Q. Which interrogatory do you have
11 in mind?

12 A. I can't answer that
13 specifically in front of me.

14 Q. Is it an interrogatory that was
15 from the Brevet side or from Mr. Iacovacci?

16 A. I would have to go look to be
17 able to tell you.

18 Q. It's your understanding that
19 there is an interrogatory that provides the
20 information that we just went through?

21 A. I can't tell you that without
22 looking at them.

23 Q. Okay, but that's -- sitting
24 here today, that's your best recollection
25 as to the basis for your last answer, some

1 D. MONTICCIOLO

2 interrogatory in this case, you just don't
3 know which one?

4 A. Correct.

5 I am not a lawyer.

6 Q. Okay. All of the 26 categories
7 you listed are designed to fit into the
8 first of the two categories that I asked
9 you to identify, that is alleged trade
10 secrets that were allegedly misappropriated
11 by Mr. Iacovacci and that caused damage to
12 Brevet?

13 A. Correct.

14 Q. Okay, are there any trade
15 secrets that would fit into the second
16 category that I asked you about?

17 A. Yes.

18 Q. All right, let's get that list,
19 please.

20 A. Which recruiters we use. How
21 we recruit people. Various forms of how,
22 you know, payroll is done, benefits.

23 Q. Is that two different
24 categories there, payroll and benefits, or
25 is that one set of trade secrets?

1 D. MONTICCILO

2 A. They -- I believe they are
3 separate.

4 Q. Separate, okay.

5 So you have proprietary methods
6 for dealing with payroll and for dealing
7 with benefits?

8 A. They are specific to us, yes.

9 Q. What do you mean by specific to
10 you?

11 A. They are -- they are
12 specifically our benefits and our payroll
13 process.

14 Q. Okay, and they are proprietary,
15 in your view?

16 A. In my view, yes.

17 Q. In your view, and, again, by
18 you with respect to these questions, at
19 least, I am referring to the corporate
20 entities that you are representing in
21 giving this testimony?

22 A. Yes.

23 Q. Okay. Keep going.

24 A. Vacation policies.

25 Q. Vacation policies, what --

1 D. MONTICCIOLO

2 A. Vacation days, what the
3 holidays are.

4 Q. What the holidays are, yeah. I
5 get that. So that's proprietary to you,
6 okay. What else?

7 A. Which --

8 Q. And there any proprietary
9 holidays that you haven't informed the rest
10 of the world about?

11 A. Which ones Brevet views to be
12 holidays and how we handle holidays.

13 Q. How does Rosh Hashanah fit on
14 that list; is that a proprietary holiday in
15 your view?

16 A. I didn't say that the holiday
17 is proprietary, I said the holidays and how
18 we manage them.

19 Q. Okay.

20 A. Make them available.

21 Q. My mistake, sorry. Keep going.

22 A. Which, which countries our
23 funds are in.

24 Q. The countries are trade
25 secrets, the list of countries that your

1 D. MONTICCIOLO

2 funds are in?

3 A. Again, trade secret is
4 something that's unique and proprietary to
5 us.

6 Q. So yes?

7 A. Correct.

8 Q. As an aside, as a regulated
9 entity, you don't disclose publically where
10 your funds are located, what countries your
11 funds are located in?

12 A. No.

13 Q. Okay.

14 A. And, similarly, the -- I think
15 this is probably under the first one of the
16 geography of our investors, so we will keep
17 that under our first category.

18 I am trying to think of what
19 else is under the second category.

20 Q. Okay. Take your time.

21 A. At this time, I am sure there
22 are more, but I don't recall them off the
23 top of my head.

24 Q. Well, you understand that you
25 are here as a 30(b)(6) witness, so you

1 D. MONTICCIOLO

2 presumably prepared to provide the list
3 that I just asked you for, are there any
4 other categories that you have identified
5 or trade secrets that you have not listed
6 in response to my question?

7 A. To the best that I can
8 remember, these are the ones that I
9 remember.

10 Q. Did that second list in
11 response to what I will call question 1B
12 that I asked you, did that also come from
13 interrogatory responses?

14 A. I don't recall.

15 Q. You don't know where that came
16 from?

17 A. I didn't differentiate them
18 that way in my mind.

19 Q. That is fair, but do you know
20 where it came from, the list?

21 A. I don't, because I wasn't
22 looking to do that differentiation.

23 Q. What did Mr. Iacovacci do to
24 misappropriate Brevet's holiday policies?

25 A. I don't know specifically.

1 D. MONTICCIOLO

2 Did he?

3 Q. I don't know, you're the
4 witness.

5 Do you know whether he
6 misappropriated Brevet's proprietary
7 vacation policies?

8 MR. SOLOMON: Just, by the way,
9 it's 5:25 (Inaudible.)

10 THE WITNESS: I do. I do have
11 five more minutes.

12 A. Again, I said our holiday
13 policy approach or policy, not the specific
14 holidays. I don't recall specifically what
15 he did with those.

16 Q. Well, you are here in the
17 30(b)(6) capacity, Mr. Monticciolo, I
18 believe your testimony is that you are
19 alleging that Mr. Iacovacci misappropriated
20 the proprietary trade secrets contained in
21 Brevet's vacation policies, if I understood
22 your testimony correctly, and I am asking
23 you are you asserting that Mr. Iacovacci
24 did, in fact, misappropriate your --
25 Brevet's vacation policies?

1 D. MONTICCIOLO

2 A. If he copied Brevet materials
3 outside of Brevet, that is a violation of
4 our policies and procedures protecting our
5 trade secrets, then yes.

6 Q. Okay, well, the two follow-up
7 questions I have to that answer,
8 Mr. Monticciolo, are, number one, I would
9 like an answer that doesn't start with the
10 word if, because I am asking you for your
11 view.

12 I don't want a contingent view,
13 I want to know whether or not, sitting here
14 today, Brevet is contending and asserting
15 claims in a federal lawsuit that
16 Mr. Iacovacci misappropriated the trade
17 secrets contained in Brevet's vacation
18 policy, yes or no?

19 A. Yes, amongst many others.

20 Q. What is the basis for your
21 assertion that Mr. Iacovacci
22 misappropriated Brevet's confidential,
23 proprietary trade secret vacation policies,
24 policies concerning holidays?

25 A. The policies clearly state

1 D. MONTICCIOLO

2 Brevet material cannot be copied outside of
3 the Brevet environment without written
4 authorization, they need to be protected,
5 destroyed if they leave the firm and
6 numerous other policies and procedures that
7 were violated.

8 Q. Are the vacation policies and
9 trade secrets that you are referring to
10 written down?

11 A. Yes.

12 Q. And are they in the form of an
13 e-mail or a document, what is it?

14 A. The employee manual, which is
15 attested to, including by Paul, and
16 reviewed and approved by him.

17 Q. The vacation policies and the
18 trade secrets associated with them are
19 written down in the employee manual; did I
20 get that right?

21 A. Amongst others, but yes.

22 Q. Amongst other things that are
23 written down in the employee manual?

24 A. You asked about the vacation
25 policy.

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2 Q. Yeah, I just wanted to clarify
3 what you meant when you added the words
4 amongst others; you were saying amongst
5 other things that are in that manual or
6 amongst other places where your trade
7 secrets concerning vacation are written
8 down?

9 A. There are other places that are
10 part of our trade secrets where those
11 vacation policies are also available.

12 Q. And what is the basis for
13 alleging that Mr. Iacovacci misappropriated
14 them?

15 A. From what I am aware, he copied
16 all of our policies and procedures and
17 handbook outside of Brevet, in violation of
18 our code of ethics, our e-mail policies,
19 our handbook and our right to maintain
20 everything confidential proprietary.

21 Q. Are you allowed to take your
22 employee handbooks outside of the office?

23 A. No.

24 Q. Have you ever done it?

25 A. No.

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2 Q. Is it your position that any
3 employee at Brevet who has carried an
4 employee handbook outside of the Brevet
5 office has engaged in federal trade secret
6 misappropriation?

7 A. We have protected that trade
8 secret by not making our physical handbook
9 and it's on a protected website that only a
10 Brevet employee can access.

11 Q. Is the answer to my question
12 yes or no, is it your position that any
13 Brevet employee who has carried a Brevet
14 employee manual outside of the Brevet
15 offices has engaged in the violation of
16 federal trade secrets laws?

17 A. In the hypothetical that there
18 was a manual that you could carry outside
19 our office, it would be in violation of our
20 policies and procedures protecting our
21 trade secrets and proprietary information
22 of Brevet, yes.

23 Q. I want to make sure that we are
24 not talking past each other. I appreciate
25 the fact that you are also telling me that

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2 you believe that doing certain things
3 violates your own policies and procedures,
4 you understand the difference between
5 violating a policy or procedure in an
6 employee handbook or a code of ethics and
7 engaging in misappropriation of trade
8 secrets under federal law, right?

9 MR. SOLOMON: That question is
10 actually beyond the scope of the
11 30(b)(6) and so I am just going to
12 renew the objection that we made.

13 MR. CYRULNIK: Yeah, I don't
14 know see how this could possibly be
15 objected to on the grounds that it is
16 beyond the scope of a 30(b)(6) --

17 MR. SOLOMON: You are asking a
18 30(b)(6) witness whether something
19 violates federal law, do we have to
20 have a long discussions about whether
21 that's a proper question? It's
22 totally improper and you know that.

23 MR. CYRULNIK: We certainly
24 don't need to have a long discussion
25 about it, the question was entirely

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2 proper, but I don't think it's going
3 to be decided here, so why don't we
4 leave it aside and your objection is
5 noted for the record, Mr. Solomon.

6 Q. Mr. Monticciolo, do you
7 appreciate the difference between violating
8 a code of ethics or an employee policy or
9 procedure on the one hand and engaging in
10 misappropriation of trade secrets under
11 federal law on the other, yes or no?

12 A. No.

13 Q. Okay.

14 MR. CYRULNIK: Why don't we do
15 this, I am respectful of your time
16 and your commitments and
17 Mr. Solomon's, as well. As I said at
18 the beginning of this deposition, I
19 think. We were informed yesterday
20 that you had a hard cutoff of 5:25,
21 which I know you have graciously
22 extended to 5:31 and I know you have
23 an important meeting today or tonight
24 with an unidentified CEO.

25 I think I have covered, you

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2 know, most of the material I wanted
3 to cover, if not all of the material,
4 on the personal side.

5 I am sure Mr. Solomon and you
6 can appreciate that having gotten a
7 list of some 30-plus trade secrets
8 that are allegedly misappropriated,
9 including having learned the
10 responses that you gave me to my last
11 set of questions over the last few
12 minutes, that how we are in a
13 position where I do have additional
14 questions on the 30(b)(6) topics and
15 so what I would propose is that we,
16 in light of your schedule, break,
17 hold the 30(b)(6) component of the
18 deposition open to try to finish this
19 line of discussion at a time that
20 Mr. Solomon and I can work out and --

21 MR. SOLOMON: You know what, I
22 am not going to agree to -- I am not
23 going to agree. You made your
24 statement, I don't agree with it.

25 But I think we were moving a

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2 little bit more constructively when
3 you told me you were going to go
4 through Mark's stuff and tell me what
5 actually you still needed. I
6 would --

7 Please do that, so that we can
8 see whether we are going to have
9 something to disagree on or not,
10 okay. But I think we can let the
11 witness go.

12 MR. CYRULNIK: Yes. And, to be
13 clear, I am fine with that approach,
14 just to make sure we are on the same
15 page.

16 I will go through both the
17 30(b)(6) topics in which you were
18 designated, Mr. Monticciolo, and
19 those that Mr. Callahan was
20 designated on together with the
21 transcripts that we are being
22 provided by the court reporters in an
23 effort to try and really cull through
24 and identify which topics we still
25 have questions on. There certainly

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2 are a few. And then I will work with
3 Mr. Solomon to see if we can reach
4 agreement on who will be siting to
5 address those topics or the remaining
6 questions on those topics at a time
7 that we can both work out and
8 hopefully we could do that, so.

9 MR. SOLOMON: We are repeating
10 ourselves. I don't agree, but I
11 don't think we have to decide.

12 MR. CYRULNIK: That is fine,
13 you can state your position on the
14 record, you can just say you don't
15 agree, that's fine. I want to be
16 clear for the record as to what we
17 plan to do and we certainly plan to
18 try to work together with you, Lou,
19 to work out both --

20 MR. SOLOMON: Too late.

21 MR. CYRULNIK: -- a time --

22 MR. SOLOMON: We are not
23 waiving any of our objections as a
24 result of that, okay.

25 MR. CYRULNIK: -- mutually

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agreeable time and witness to address
the remaining 30(b)(6) topics and to
address the Mr. Callahan questions.

So, with that, I suppose we can
go off the record. And I will thank
you for your time today,
Mr. Monticciolo. And --

MR. SOLOMON: And the court
reporter and the videographer, thank
you all very much.

THE VIDEOGRAPHER: We are off
the record at 5:34 p.m. and this
concludes today's testimony given by
Douglas Monticciolo.

The total number of media units
used was five and will be retained by
Veritext New York.

(Whereupon, at 5:34 P.M., the
Examination of this witness was
concluded.)

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D. MONTICCIOLO
D E C L A R A T I O N

I hereby certify that having been
first duly sworn to testify to the truth, I
gave the above testimony.

I FURTHER CERTIFY that the foregoing
transcript is a true and correct transcript
of the testimony given by me at the time
and place specified hereinbefore.

DOUGLAS MONTICCIOLO

Subscribed and sworn to before me
this ____ day of _____ 20____.

NOTARY PUBLIC

D. MONTICCILO
E X H I B I T S

PLAINTIFF EXHIBITS

EXHIBIT NUMBER	EXHIBIT DESCRIPTION	PAGE
Exh 1	Document entitled "Corporate Organizational Chart"	65
Exh 2	Affidavit from Mr. Callahan	254
Exh 3	Termination letter, dated October 14, 2016	N/A
Exh 4	January 12, 2016 e-mail chain	303
Exh 5	Brevet Direct Lending - Short Duration Fund, L.P. and Subsidiaries Consolidated Financial Statements Year Ended December 31, 2016	385
Exh 6	2015 Brevet Short Duration Partners, LLC Profit and Loss Statement	386
Exh 7	2016 Brevet Short Duration Partners, LLC Profit and Loss Statement	391

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Exh 8	Brevet Direct Lending - Short Duration Fund, L.P. and Subsidiaries Consolidated Financial Statements Year Ended December 31, 2015	N/A
Exh 9	January 25, 2016 e-mail chain	401
Exh 10	30(b)(6) Notice	406

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[illegible]

THIS _____ DAY OF _____, 20__.

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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